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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 DORIS TSE,

4 Plaintiff,

5 v.

10 Civ. 7207 (DAB)

6 NEW YORK UNIVERSITY,

7 Defendant.

8 -----x

9 June 13, 2016
10:35 a.m.

10 Before:

11 HON. DEBORAH A. BATTI,

12 District Judge

13 APPEARANCES

14 DORIS TSE, Pro Se

15 CERASIA & DEL REY-CONE, LLP
Attorneys for Defendant

16 BY: EDWARD CERASIA, II
- and -

17 DANIEL T. DREISEN, in-house counsel, New York University

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1 (Trial resumed)

2 THE COURT: Doris Tse versus New York University.

3 Is the plaintiff ready?

4 MS. TSE: Yes, I am.

5 THE COURT: Good morning, Dr. Tse.

6 MS. TSE: Good morning, your Honor.

7 THE COURT: On behalf of New York University we have

8 Mr. Ed Cerasia.

9 MR. CERASIA: Good morning, your Honor.

10 THE COURT: And Daniel Driesen.

11 MR. DRIESEN: Yes, ma'am. Good morning.

12 THE COURT: Good morning.

13 So, we can commence. Who is the first witness?

14 MS. TSE: Before we do, I would like to request
15 permission to question the witness from here rather than the
16 lectern because I am afraid I will not be able to stand for
17 more than 30 minutes.

18 THE COURT: You certainly may.

19 MS. TSE: Thank you.

20 THE COURT: Just make sure you use the microphone.

21 MR. DRIESEN: I will get him, your Honor.

22 THE COURT: Good morning. Please, step forward.

23 Good morning. Would you remain standing and raise
24 your right hand?

25 MARTIN BLASER,

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Blaser - direct

1 called as a witness by the Plaintiff,

2 having been duly sworn, testified as follows:

3 THE COURT: Now, would you take that microphone and
4 direct it more to you, and you can pull your chair in and make
5 yourself comfortable.

6 THE WITNESS: Okay.

7 THE COURT: Would you state and spell your full name?

8 THE WITNESS: My name -- excuse me. My name is Martin
9 Blaser. B-L-A-S-E-R.

10 THE COURT: And how do you spell Martin?

11 THE WITNESS: Martin. M-A-R-T-I-N.

12 THE COURT: Thank you.

13 You may, proceed.

14 DIRECT EXAMINATION

15 BY MS. TSE:

16 Q. Hello, Dr. Blaser.

17 A. Good morning.

18 Q. Good morning. We know each other well?

19 THE COURT: Dr. Tse, do me a favor; move the
20 microphone a little closer to you?

21 MS. TSE: Is this better?

22 THE COURT: Yes.

23 BY MS. TSE:

24 Q. I am Doris Tse and I am representing myself, the plaintiff.
25 Have you testified in court before?

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Blaser - direct

1 A. I have.

2 Q. Most of my questions will be yes or no. You will be
3 presented with exhibits. If you need more time to look them
4 over, please, let me know.

5 Dr. Blaser, what is your current position at the NYU
6 School of Medicine?

7 A. I am the Muriel and George Singer Professor of
8 Translational Medicine, Professor of Microbiology, and I direct
9 the Human Microbiome -- M-I-C-R-O-B-I-O-M-E -- Program at NYU.

10 THE COURT: Let me just interrupt for a second.

11 Dr. Blaser, we are not scientifically oriented so
12 whenever you say anything scientific of at least three
13 syllables, please be sure to spell it for us?

14 THE WITNESS: I will. Thank you.

15 THE COURT: Thank you.

16 BY MS. TSE:

17 Q. What was your position at the NYU School of Medicine from
18 April 2010 through April 2011?

19 A. I served as the Chair of the Department of Medicine.

20 Q. Were you deposed on September 28th, 2011 by Dr. Tse's
21 counsel at the offices of Seyfarth & Shaw in New York?

22 A. I don't remember the precise date, but that sounds about
23 right.

24 MS. TSE: Please accept Exhibit 1, Blaser deposition,
25 into evidence?

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Blaser - direct

1 THE COURT: Well, that is not necessarily how we do
2 things.

3 If you have certain parts of the deposition that you
4 would like to use to question Dr. Blaser, that's fine, but the
5 deposition is not in replacement of his testimony since he is
6 here today. So, would you just ask him whatever questions
7 directly and he can answer?

8 MS. TSE: Yes, your Honor.

9 BY MS. TSE:

10 Q. You testified that there were about a thousand faculty
11 members under your supervision at the time; is that correct?

12 A. Yes; more than a thousand.

13 Q. Please describe your responsibilities to the faculty
14 members in your department.

15 A. As chair of medicine I had multiple responsibilities. I
16 was appointed by the Dean of the School of Medicine which in
17 the School of Medicine he was the ultimate authority.

18 As Chair of Medicine I had responsibility to students,
19 house staff, staff, and faculty to help them in their career
20 development, have a safe and honest workplace, and to
21 adjudicate disputes.

22 Q. And the Dean at that time would be Dr. Steven Abramson?

23 A. The Dean of the School of Medicine at that time was
24 Dr. Robert Grossman.

25 Q. Okay.

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Blaser - direct

1 And where does Dr. Steven Abramson, who is the vice
2 Dean of faculty, fit into all of this?

3 A. The Dean of the School of Medicine had appointed a number
4 of vice deans for different areas and Dr. Abramson was the Vice
5 Dean for Faculty and Education.

6 Q. Were you Dr. Tse's supervisor before and after she was
7 removed as the CFAR flow cytometry -- C-Y-T-O-M-E-T-R-Y -- core
8 director on April 1st, 2010?

9 THE COURT: Dr. Tse --

10 Q. I will repeat the question. I'm sorry.

11 Were you Dr. Tse's supervisor before and after she was
12 removed as the CFAR flow cytometry core director on April 1st,
13 2010?

14 A. Yes. Dr. Tse was -- you -- were a member of the Department
15 of Medicine, of the faculty of the Department of Medicine, and
16 ultimately under my responsibility.

17 Q. Can we present this to Dr. Blaser? That would be Exhibit
18 2.

19 THE COURT: Bear with me just one second.

20 Do you have it, Mr. Cerasia?

21 MR. CERASIA: Yes. I have no objection.

22 THE COURT: You may present it.

23 MR. CERASIA: Your Honor, sorry. May I be heard about
24 something?

25 THE COURT: Certainly.

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Blaser - direct

1 MR. CERASIA: I notice this exhibit is different.
2 Dr. Tse submitted new exhibits today and it looks like she has
3 underlined all of her exhibits. I will state that I don't
4 believe any of this underlining was in the original exhibit. I
5 think she did that with all of them, from what I can gather, in
6 certain parts of them.

7 MS. TSE: I just wanted it easier. It is just to
8 facilitate the questioning of the witnesses so they won't have
9 to read through the entire document.

10 THE COURT: Although they do have a right to do so, if
11 they want to.

12 MS. TSE: Yes, I understand.

13 After I direct them to the underlined portions they,
14 of course, are totally free to read the entire piece.

15 THE COURT: Do you --

16 MS. TSE: Yes, I do have a question.

17 THE COURT: Bear with me just one second. Did you
18 offer this in evidence?

19 MS. TSE: Yes. JPTS Exhibit number for that was 9E.

20 THE COURT: And it is now Plaintiff's Exhibit 2?

21 MS. TSE: Yes. I didn't realize I would cause so much
22 trouble. I eliminated about half of the exhibits that was in
23 the JPTS because I was asked to streamline so streamline, I did
24 streamline. I just didn't realize that I should have kept the
25 original exhibit numbers.

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Blaser - direct

1 THE COURT: But you have provided a key?

2 MS. TSE: Yes. There is a key on the front page.

3 THE COURT: All right.

4 MS. TSE: And a copy was given to Mr. Cerasia as well.

5 THE COURT: All right. So, Plaintiff's Exhibit 2

6 received in evidence.

7 MS. TSE: Thank you.

8 (Plaintiff's Exhibit 2 received in evidence)

9 BY MS. TSE:

10 Q. May I continue, Dr. Blaser?

11 A. Yes, please.

12 Q. So, you were Dr. Tse's supervisor before and after she was
13 removed as the CFAR flow cytometry core director. Was CFAR a
14 division within the Department of Medicine from April 2010
15 through April 2011?

16 A. The answer is a little complex because the CFAR function at
17 the level of the school and at the level of the department.
18 CFAR was a school-wide center. Administratively, it was housed
19 in the Department of Medicine.

20 Q. So you were not directly responsible for or had
21 jurisprudence over the operation of the CFAR?

22 THE COURT: I'm sorry. I don't understand the
23 question.

24 MS. TSE: Dr. Blaser just said that CFAR was
25 administratively a division within the Department of Medicine

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Blaser - direct

1 which would put CFAR under his purview. The question I have is
2 operationally, was the CFAR also under your purview.

3 THE COURT: Before you answer that, I'm not getting a
4 feed.

5 (Pause)

6 THE COURT: All right. The last question before I
7 interrupted was: So, you were not directly responsible for, or
8 had jurisprudence over the operation of the CFAR?

9 THE WITNESS: So, again, to reiterate, the
10 administrative system was complex. The CFAR was a unit of the
11 School of Medicine. The dean appointed Dr. Valentine as the
12 Director of the CFAR but, administratively, the CFAR was housed
13 within the Department of Medicine. So we helped the CFAR with
14 all of the work on hiring, purchasing, all the administrative
15 aspects. And of course Dr. Valentine and yourself also were
16 members of the Department of Medicine.

17 BY MS. TSE:

18 Q. So, Dr. Valentine was under your supervision or you were
19 Dr. Valentine's supervisor?

20 A. Yes, but he was also under the direct supervision of the
21 dean as CFAR director.

22 Q. Was that why he copied you on the letter?

23 A. I don't -- well, as a matter of form, for administrative
24 purposes that would be normal for him to copy me.

25 Q. Exhibit 3 is a letter you wrote in 2005 to Dr. Glickman who

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Blaser - direct

1 was then the Dean of the School of Medicine.

2 May I approach, your Honor?

3 THE COURT: You may.

4 Q. When you have a chance to examine the letter, please, let
5 us know. And read the underlined section and anything else
6 that you want to report.

7 THE COURT: Well, you have to read it to yourself,
8 Dr. Blaser, until it is offered and received in evidence.

9 A. I have finished reading it.

10 THE COURT: Is that your signature on the document?

11 THE WITNESS: That is.

12 MS. TSE: Please admit Exhibit 3 into evidence.

13 THE COURT: Any objection?

14 MR. CERASIA: I don't, your Honor, but I did note that
15 we had one in the pretrial order but at this point I will
16 withdraw the objection.

17 THE COURT: All right.

18 MR. CERASIA: It is a little old, but --

19 THE COURT: All right.

20 MR. CERASIA: -- compared to the events here.

21 THE COURT: So that the letter dated May 9th, 2005, it
22 is Plaintiff's Exhibit 3, it is received in evidence.

23 (Plaintiff's Exhibit 3 received in evidence)

24 BY MS. TSE:

25 Q. Please read the underlined section or anything else that

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Blaser - direct

1 you would like to report.

2 A. It is important to note that Dr. Tse was seriously injured
3 in an automobile accident in 1997 and was diagnosed with SLE in
4 1999. The letter has prompted hospitalization on several
5 occasions and has also required high-dose corticosteroid
6 therapy. Despite these difficulties, Dr. Tse contributes
7 substantially to the research programs in the Department of
8 Medicine and School of Medicine and exhibits recognized
9 expertise in creative initiative. Despite the hiatus due to
10 illness, she has taught and published continuously.

11 Q. So, it is safe to say that since 2005 you were aware of
12 Dr. Tse's medical impairments?

13 A. Yes.

14 Q. And despite these limitations Dr. Tse was promoted to
15 associate research professor around September 2005. Do you
16 remember that as such?

17 A. I don't remember the date.

18 Q. Okay.

19 May I approach, your Honor?

20 THE COURT: You may. What exhibit are you looking at?

21 MS. TSE: Exhibit 4. They're in sequential order.

22 That makes it more convenient but it messes everything else up.
23 The document is Bates stamped NYU 003538.

24 BY MS. TSE:

25 Q. You may not have seen that before because it's actually

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Blaser - direct

1 produced by human resources.

2 THE COURT: Any objection, Mr. Cerasia?

3 MR. CERASIA: I don't, your Honor.

4 THE COURT: All right. Plaintiff's Exhibit 4 received
5 in evidence.

6 (Plaintiff's Exhibit 4 received in evidence).

7 BY MS. TSE:

8 Q. Exhibit 5 is an e-mail that Dr. Tse sent to you in March
9 2007.

10 May I? That's Exhibit 5?

11 THE COURT: Do you have any questions for Dr. Blaser
12 on Exhibit 4?

13 MS. TSE: No. No. That's just to confirm my
14 promotion in 2005.

15 THE COURT: All right.

16 Turning to Exhibit 5.

17 MS. TSE: I mean, yes, Exhibit 5. That exhibit was
18 Bates stamped Plaintiff's Exhibit 004.

19 THE COURT: Any objection, Mr. Cerasia?

20 MR. CERASIA: I do, your Honor. I just believe it is
21 irrelevant. It is an e-mail from 2007.

22 MS. TSE: It confirms that NYU was aware of Dr. Tse's
23 impairments from that --

24 THE COURT: I think your other exhibits, especially
25 the one signed by Dr. Blaser, makes it very clear that they

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Blaser - direct

1 were aware of your disabilities.

2 MS. TSE: This one is a request for accommodation.

3 THE COURT: But this is not the relevant time period,
4 is it?

5 MS. TSE: No, but it goes to show that NYU not only
6 has received a request for accommodations from me before the
7 time period but they have responded to and provided me with the
8 requested accommodation.

9 THE COURT: But this was not during a time period that
10 is at issue, correct?

11 MS. TSE: Yes, that's correct.

12 THE COURT: All right. Objection sustained as to
13 Plaintiff's Exhibit 5.

14 BY MS. TSE:

15 Q. Exhibit 6 is a letter that I sent you on May 13th, 2010
16 Bates stamped NYU 003909.

17 May I approach, your Honor?

18 THE COURT: You may.

19 Q. We are looking at Exhibit 6. The letter was also copied to
20 Dr. Abramson and Reggie Odom, the VP of Employee Relations.
21 Would you authenticate this letter for the Court?

22 A. This is a letter addressed to me on May 13th, 2010. It is
23 likely that I received it.

24 THE COURT: But at this moment you don't have any
25 present recollection you received it?

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Blaser - direct

1 THE WITNESS: I don't have a recollection of this
2 letter but I have a recollection about this issue, about
3 permanent long-term disability.

4 THE COURT: All right, so --

5 Q. Nonetheless, would you mind reading the boxed section?

6 THE COURT: Wait, wait, wait.

7 MS. TSE: I'm sorry, your Honor. I didn't mean to
8 interrupt.

9 THE COURT: Mr. Cerasia?

10 MR. CERASIA: I have no objection, your Honor.

11 THE COURT: All right. Plaintiff's Exhibit 6 received
12 in evidence.

13 (Plaintiff's Exhibit 6 received in evidence)

14 THE COURT: You may proceed.

15 BY MS. TSE:

16 Q. Please read the boxed paragraph to the Court.

17 A. I am hereby requesting long-term disability leave
18 pertaining to 65 percent of my time and effort at NYUSM
19 starting June 1, 2010. Performing laboratory equipped
20 experiments on biohazardous specimens (human fluids and tissue
21 isolates) requires a level of manual dexterity and fine control
22 I no longer have which precludes increasing my time and effort
23 on collaborative projects with Drs. W. Rom, R-O-M, J. Reibman,
24 R-E-I-B-M-A-N and G. Young for generating preliminary data that
25 is needed to apply for independent funding from extramural

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Blaser - direct

1 sources.

2 Q. Do you consider that you were duly informed then by Dr. Tse
3 that she could not fulfill the responsibilities of her position
4 because of her disability?

5 A. That's a legal question. I don't know if I can answer
6 that. It is clear that you were requesting long-term
7 disability leave and, as I remember, the department was quite
8 supportive of your request.

9 Q. The letter specifically says that, "Performing laboratory
10 experiments requires a level of manual dexterity and fine hand
11 control I no longer have."

12 Now, can you please explain to the Court why one would
13 need manual dexterity and fine hand control to do experiments
14 and also why I would need preliminary data in order to apply
15 for independent funding?

16 MR. CERASIA: I am just going to object to the extent
17 it is compound, your Honor.

18 THE COURT: Yes. The objection to form is sustained.

19 Who is the gentleman who just came in?

20 MR. GASBURY: Your Honor, I am a member of the bar. I
21 am just here to observe.

22 THE COURT: Thank you.

23 MR. GASBURY: My name is Gasbury.

24 THE COURT: Thank you.

25 BY MS. TSE:

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Blaser - direct

1 Q. Let me simplify that.

2 First, can you explain to the Court why -- and if you
3 don't agree, say so -- performing laboratory experiments
4 requires manual dexterity and fine control of the hands?

5 A. I'm certain that the kinds of experiments you were
6 performing would have required manual dexterity.

7 Q. Okay.

8 A. I am certain of that.

9 Q. And please then explain to the Court why generating
10 preliminary data is essential to applying for extramural
11 funding on projects that are independent of the CFAR?

12 A. Most grants to the NIH require -- they don't absolutely
13 require but it is important to have preliminary data to support
14 the hypothesis being tested in the grant. So, preliminary data
15 is important but it can come from a variety of sources.

16 Q. And if you have been removed from a particular project you
17 would pretty much -- like Dr. Tse -- have to start out fresh;
18 is that right?

19 MR. CERASIA: Objection.

20 THE COURT: Sustained as to form.

21 BY MS. TSE:

22 Q. All right. Let me rephrase that.

23 Since I was removed as the CFAR cytometry flow core
24 director which was 65 percent of my effort at the school, in
25 order for me to replenish that 65 percent effort I would have

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Blaser - direct

1 to apply and get funded on new research projects; is that
2 right?

3 A. I think the answer is a little complicated.

4 You told us, you informed us that you had a disability
5 and wanted long-term disability which the department was
6 supportive of and, as I understood it, your request for 65
7 percent disability isn't really possible. The department and
8 the school supported you for a hundred percent disability. So,
9 based on your condition the department wanted -- wanted to help
10 you obtain the disability support to the maximum extent that
11 you were entitled to.

12 As a member of the non-tenured research track at the
13 university all your efforts have to be supported by grant
14 support and that grant support could come from grants that you
15 wrote or grants that another member of the faculty wrote that
16 would include your efforts in one form or another that would
17 help support your salary.

18 Q. Which was the case in May 2010 and I will be providing
19 evidence to support that allegation. But, meanwhile, let's
20 continue with Dr. Blaser.

21 You testified that your graduate student MaryAnn Pohl
22 worked with Dr. Tse; is that correct?

23 A. That's correct.

24 Q. And the project required using flow cytometry to study
25 bacteria; is that right?

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Blaser - direct

1 A. That's correct.

2 Q. And, together with MaryAnn, Dr. Tse developed what was
3 considered an innovative methodology at that time to allow her
4 to study the bacteria; is that correct?

5 MR. CERASIA: Your Honor, I'm just going to lodge an
6 objection because I believe this is a fair time outside of the
7 2010 to '11 time period.

8 THE COURT: Yes.

9 Dr. Tse, what is the relevance of this line of
10 questioning?

11 MS. TSE: To provide evidence that I am competent
12 because that was called into question at the pretrial
13 conference.

14 THE COURT: That you were competent?

15 MS. TSE: Yes. This goes to show that I could perform
16 my job if I was provided with the necessary accommodations, my
17 job as a research scientist at NYU.

18 THE COURT: All right, I will allow this.

19 BY MS. TSE:

20 Q. All right, let me run that question by you again.

21 And, together with MaryAnn, we developed what was then
22 an innovative methodology to allow her to study bacteria using
23 flow cytometry; is that right?

24 A. This work goes back many years, as you know, and as you
25 know, MaryAnn was a graduate student working under my

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Blaser - direct

1 supervision and we had a problem that required flow cytometry
2 and I recommended to MaryAnn that she contact you to work with
3 you on developing methodologies to study bacteria. I know that
4 MaryAnn worked with you. I don't know whether she operated the
5 flow machine or you operated the flow machine or a third person
6 operated the flow machine, but the work, in total, was quite
7 satisfactory and it led to publication and certainly, in my
8 mind, there was no question about your competence, technically.

9 Q. And, the results of this project, if you will recall, were
10 published in the Journal of Experimental Medicine which is a
11 highly prestigious journal around December 2009; is that about
12 right?

13 A. That's correct.

14 Q. All right.

15 I am going to present you with Exhibit 2 again, that
16 is the letter of termination from Dr. Valentine.

17 May I, your Honor?

18 THE COURT: Certainly.

19 MR. CERASIA: Help me out. What is the new number of
20 that exhibit, Dr. Tse?

21 MS. TSE: That is Exhibit 2.

22 MR. CERASIA: Oh, you are re-showing it.

23 MS. TSE: Yes.

24 Q. So, we are talking about four months between a publication
25 in a prestigious journal and your testimony just now that I am

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Blaser - direct

1 competent. Please explain to the Court why you did not find it
2 strange that within three short months after a 15-year career
3 at NYU, Dr. Tse had somehow degenerated to the level of
4 incompetence alleged by Dr. Valentine in the termination
5 letter?

6 THE COURT: Sustained. Objection sustained.

7 MR. CERASIA: Thank you.

8 MS. TSE: I did not receive reasonable accommodations
9 from the school until I was removed as director of the CFAR
10 flow cytometry core, and with your permission, we can skip over
11 Dr. Blaser's explanation but I would like to include, in
12 consideration, that that is a causal connection to failure to
13 accommodate on the part of my employer.

14 (Continued on next page)

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Blaser - direct

1 THE COURT: Okay. This is a letter that Dr. Blaser
2 was copied on but he did not write it. It was signed by
3 Dr. Valentine. Asking him why Dr. Valentine thought this is
4 not appropriate.

5 MS. TSE: All right. I will rephrase it then.
6 Q. Did you find it strange, upon reading this letter, that
7 Dr. Tse had become incompetent within three short months?
8 Dr. Valentine's letter was dated March 4, 2010.

9 MR. CERASIA: Objection.

10 THE COURT: Sustained.

11 MS. TSE: I was asking for Dr. Blaser's opinion,
12 because after I was removed as the CFAR flow cytometry core, he
13 essentially became my direct supervisor.

14 THE COURT: So is your question to Dr. Blaser did he
15 consider you incompetent in March of 2010?

16 MS. TSE: Yes.

17 THE COURT: But this is in relation to the CFAR from
18 which you had been removed?

19 MS. TSE: Yes. And whether he considered incompetence
20 was the basis for my removal.

21 THE COURT: That's too vague, Dr. Tse. I assume
22 you're talking about the second paragraph of Exhibit 2, which
23 states "On multiple occasions I," meaning Dr. Valentine, "have
24 articulated my concerns about your ability to manage the core.
25 But despite these discussions, you have been unable to

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Blaser - direct

1 successfully perform your duties as director, CFAR flow
2 cytometry core. For this reason, and in order to improve the
3 chances of success in our approaching reapplication for the
4 CFAR, your role as director of the CFAR flow cytometry core is
5 terminated as of April 1st, 2010."

6 So, there are two separate issues here, Dr. Tse.
7 Whether or not you were competent as director of the CFAR flow
8 cytometry core is not really relevant to whether or not you
9 were denied an accommodation.

10 MS. TSE: The causal connection there is that when I
11 was the director of the CFAR flow cytometry core, the budget
12 provided not only for 65 percent of my salary, but also for
13 salary, and I will be supporting -- I will be providing
14 evidence to show that, it also supported the salary of three,
15 sometimes more, laboratory staff.

16 THE COURT: Yes, but, I'm sorry to interrupt you, but
17 the problem here is that this letter is addressed to your
18 ability to manage the work of the CFAR flow cytometry core.
19 And that is not really relevant to whether or not they denied
20 you an accommodation.

21 Now, I know that you feel that because you didn't need
22 it before you were removed, that there is a causal connection.
23 But, for purposes of what we are on trial for now, the question
24 is whether after the time you were removed, you were provided a
25 reasonable accommodation. So, I don't really know that this

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Blaser - direct

1 letter is of use here.

2 MS. TSE: All right. I will continue then with what I
3 have.

4 We were up to Exhibit 6, which we will make do with
5 Dr. Blaser's testimony that he worked with me, or his graduate
6 student worked with me when I was the director of the flow
7 cytometry core, and he has no reason to consider that I was
8 incompetent and I could not fulfill my job expectations at the
9 NYU School of Medicine as an assistant research professor in
10 that respect.

11 Q. Is that correct?

12 THE COURT: It is a little premature. We're not doing
13 summations at this point. You're only asking questions of this
14 witness to support your case. So, I believe you've asked
15 everything that you -- or have you asked everything that you
16 wanted on Plaintiff's Exhibit 6?

17 MS. TSE: No. Yes, I have. And oh, I have one more
18 question for Dr. Blaser.

19 Q. You testified that you worked with Mr. Odom regarding my
20 faculty appointment.

21 THE COURT: You mean just now today?

22 MS. TSE: No, no, back in the date of the letter. May
23 of 2010.

24 Q. And that was why I had copied the letter to Mr. Odom. But
25 when you testified during your deposition, you said that you

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Blaser - direct

1 had worked with Mr. Odom --

2 THE COURT: Why don't we not worry about what he said
3 in his deposition, but just ask him the question now whether he
4 worked with Mr. Odom.

5 MS. TSE: All right. I will rephrase the question.

6 Q. Do you remember working with Mr. Odom from human resources
7 at the time that my continuing appointment in the department
8 came up?

9 A. I worked with Mr. Odom for many years over a number of
10 different issues, and certainly we worked together with
11 relation to your situation.

12 Q. Did he make you aware, because he was aware, and I will be
13 providing --

14 THE COURT: Wait. Dr. Blaser doesn't know what
15 Mr. Odom was aware of.

16 MS. TSE: All right. I will rephrase.

17 Q. Were you aware that after I was removed as the CFAR flow
18 cytometry core director, and specifically during your
19 discussions with Mr. Odom, did he make you aware that I would
20 require laboratory assistants in order to perform my duties as
21 an associate research professor, specifically to meet the
22 school's requirement for extramural funding?

23 A. I don't believe --

24 MR. CERASIA: Objection, your Honor.

25 THE COURT: Sustained. It is a compound question.

G6D3TSE2

Blaser - direct

1 Let's talk about what Dr. Blaser knew, and then if you have
2 reason to believe that he had learned something from Mr. Odom,
3 you can put that question.

4 Q. Okay. Were you aware by May 13 or before, right after I
5 was removed as the flow cytometry core director, which started
6 April 1st, 2010, that I would require laboratory assistants in
7 order to continue my job as an assistant research professor in
8 medicine, and meet the required extramural funding standards of
9 the school?

10 MR. CERASIA: I have the same objection, your Honor.
11 I think there's two questions in there at least.

12 Q. You just explained --

13 THE COURT: Wait. Dr. Blaser, were you aware that
14 Dr. Tse would need laboratory assistants in order to continue
15 in her job as an assistant research professor in medicine?

16 THE WITNESS: I'm not certain. I'm not certain
17 whether I was aware of that or not. Whether that specific
18 issue was brought to my attention. I knew that Dr. -- with her
19 removal as core director, Dr. Tse, in order to stay on the
20 faculty, would have to bring in salary support from a number --
21 from any one of different sources. She at that time had
22 partial support, up to 35 percent. And I don't know -- I was
23 not aware of her exact situation vis-a-vis trying to cover the
24 rest. But, in general, our expectation is that everyone would
25 try to cover the rest.

G6D3TSE2

Blaser - direct

1 THE COURT: So, at this time, you were not aware that
2 she needed laboratory assistants in order to be able to make
3 the requirements of extramural funding.

4 THE WITNESS: During that time period, which is some
5 time ago, I know that Dr. Tse was talking about doing
6 experiments herself. And I don't know at which point this came
7 up that she would need assistants or not.

8 THE COURT: All right.

9 BY MS. TSE:

10 Q. So at the time that I was removed as the core director,
11 which was April 1st, 2010, you may not have been aware that I
12 needed laboratory assistants or reasonable accommodations in
13 the form of laboratory assistants in order to meet the school's
14 required extramural funding or REF, but --

15 THE COURT: No. Answer that yes or no, please,
16 Dr. Blaser, and then if you want to --

17 MS. TSE: No, I'm sorry. Shall I rephrase the
18 question? Yes.

19 Q. At the time I was removed as the flow cytometry core
20 director, by Dr. Valentine, April 1st, 2010, did you realize
21 that, upon that happening, I would require laboratory
22 assistants in order to fulfill my job expectations, which is --

23 THE COURT: No. That's a good spot there.

24 Dr. Blaser, can you answer that yes or no?

25 A. I don't think that I knew that you needed laboratory

G6D3TSE2

Blaser - direct

1 assistants.

2 Q. You just explained to the Court that as a research
3 scientist, I would need preliminary data in order to apply for
4 grants from the NIH, for example.

5 A. I explained to the Court that preliminary data is usually
6 needed. And that it could come from your own efforts or it
7 could come from your colleagues like Dr. Rom or Dr. Reibman or
8 Dr. Young in their applications, plus your past publication
9 record.

10 So, I don't think it was absolutely necessary that you
11 do the experiments. But, that there was a constellation of
12 efforts and data that could help support a grant proposal.

13 Q. But on May 13, 2010, when I sent you the letter, which is
14 Exhibit 6, did you then realize that I needed laboratory
15 assistants?

16 A. Your letter said that you're requesting long-term
17 disability because it requires a level of manual dexterity and
18 fine control I no longer have. And I accepted that at face
19 value.

20 Q. All right. So you did not interpret that letter to mean
21 that if I had the laboratory assistants that I needed to
22 generate preliminary data, I would be given the opportunity to
23 apply for grants and meet the school's REF?

24 A. That's not what your letter says. Your letter requests
25 being put on disability leave. Which I was supportive of,

G6D3TSE2

Blaser - direct

1 based on your statement that you no longer had hand control.

2 Q. And Mr. Odom did not convey to you that I was applying for
3 long-term disability because I no longer have the laboratory
4 assistants that I needed to do my job?

5 A. I don't remember what he said to me or not. But I don't
6 remember that you ever came to me and said "I need laboratory
7 assistants to do my job." It's possible you did, I have no
8 memory of that.

9 Q. Did Mr. Odom explain to you that I would be considered a
10 qualified individual under the Americans with Disabilities Act?

11 A. I don't remember if he said that or not.

12 Q. So, he most likely did not convey to you that, as my
13 employer, NYU would be responsible to provide me with
14 reasonable accommodations for my medical impairments, which you
15 were aware of?

16 MR. CERASIA: Objection.

17 THE COURT: Sustained as to form.

18 MS. TSE: I will rephrase that.

19 Q. Since Mr. Odom did not convey to you that I am a qualified
20 individual under the ADA, did he convey to you that NYU, as my
21 employer, has legal obligations to me as such an individual?

22 A. In general, over the years with the large department of
23 medicine, I've had many dealings with the human resources staff
24 of the school. And as far as I knew, they were always in touch
25 with legal requirements, they were very careful to take care of

G6D3TSE2

Blaser - direct

1 all legal requirements.

2 So, I don't have any memory one way or the other
3 whether he made that statement or not.

4 Q. All right. We will move on. When you were the department
5 chair, you relied on Ms. Cribben, Ms. Lucy Cribben, because she
6 has responsibility for budgeting and balancing the books. Does
7 that sound right?

8 A. Ms. Cribben was the department administrator for many
9 years, and she had many responsibilities for budget, personnel,
10 and having the department run well and in full compliance.

11 Q. Exhibit 8 is a letter that you sent to me September 2009 on
12 my required extramural funding.

13 MS. TSE: May I approach, your Honor?

14 THE COURT: You may.

15 Q. The exhibit was Bate stamped plaintiff's 0117. Can you
16 authenticate that, Dr. Blaser?

17 A. This appears to be an authentic letter.

18 MS. TSE: Please admit that into evidence, that would
19 be Exhibit 8.

20 THE COURT: Any objection?

21 MR. CERASIA: No objection, your Honor.

22 THE COURT: Plaintiff's Exhibit 8 received in
23 evidence.

24 (Plaintiff's Exhibit 8 received in evidence)

25 Q. Please read the underlined text to the Court.

G6D3TSE2

Blaser - direct

1 THE COURT: This would be on page two?

2 MS. TSE: That would be on page two.

3 A. The underlined text says "Your current salary for 2008/2009
4 academic year is \$104,058." The second underlined text about
5 two line -- two paragraphs later is "Your current support on
6 extramural funding is \$104,058 which meets the AEC performance
7 standards."

8 Q. So that's 100 percent of my salary was derived from
9 extramural support.

10 A. That's correct.

11 Q. Thank you. Did Ms. Cribben, who was in charge of keeping
12 the books, so to speak, inform you that Dr. Tse's REF remained
13 at 100 percent until May 31, 2010, before she lost 65 percent
14 of her salary support from the NIH when she was removed as the
15 flow cytometry core director?

16 A. I don't remember whether she informed me or not. But, we
17 understood that when you were removed as core director, that
18 you would not -- you would no longer be 100 percent supported
19 by grants.

20 MS. TSE: Exhibit 10 is a printout of a policy on
21 performance expectations for research faculty. This version
22 was approved by the provost in 2008 and was revised at the
23 request of faculty counsel June 30, 2011. So, it was active
24 during the period when Dr. Tse's REF came into question,
25 April 2010, through her termination in April 2011.

G6D3TSE2

Blaser - direct

1 May I approach, your Honor?

2 THE COURT: You may. Let Dr. Blaser have an
3 opportunity to review it.

4 THE WITNESS: I have the document, but I do not
5 believe it applies to you.

6 Q. All right. We will go through it and you can explain to
7 the Court your position.

8 THE COURT: Mr. Cerasia?

9 MR. CERASIA: No objection.

10 MS. TSE: On the page Bate stamped -- can we please
11 admit the exhibit into evidence so I can continue with
12 Dr. Blaser?

13 THE COURT: Any objection, Mr. Cerasia?

14 MR. CERASIA: No objection.

15 THE COURT: Plaintiff's Exhibit 10 received in
16 evidence.

17 (Plaintiff's Exhibit 10 subject to connection received
18 in evidence)

19 Q. On the page Bate stamped NYU 003084, can you please read
20 paragraph B1 one to the Court.

21 A. Let me remind you, Dr. Tse, that this policy has to do with
22 tenured faculty members and not to faculty members on the
23 research track.

24 Q. Please just read the paragraph.

25 THE COURT: Well, I think that Dr. Blaser's made an

G6D3TSE2

Blaser - direct

1 important point in terms of the relevance of this document.

2 Would you care to make an offer of proof to the Court as to why
3 you think it is relevant?

4 MS. TSE: Specifically, because paragraph B1 required
5 extramural funding, first paragraph, "Full-time research
6 activity. A research faculty member who is full-time in the
7 basic science departments or a full-time researcher in a
8 clinical department is expected to provide from extramural
9 funding at least 60 percent of total compensation or a higher
10 percentage if preexisting agreements or promulgated
11 departmental policies exist requiring a higher percentage."

12 Nowhere did it say that it has to be a tenured member
13 of the faculty. As a matter of fact, on the face page of the
14 document, it is a policy on performance expectations for
15 research faculty, and it did not specify whether the faculty
16 member has to be tenured or not. As a matter of fact, if the
17 research member is tenured, there are different policies that
18 apply.

19 THE WITNESS: My understanding, my understanding, and
20 the general understanding of this policy is that it dealt with
21 full-time tenured faculty members.

22 THE COURT: Let me interrupt you. Is there anything
23 within this document that you can point me to that suggests it
24 is for tenured faculty or limited to tenured faculty?

25 THE WITNESS: I don't -- I would have to read it line

G6D3TSE2

Blaser - direct

1 by line.

2 THE COURT: In fact, we're going to take a little
3 break to give you time to look through this document to see if
4 there is anything that you can point the Court to that supports
5 your testimony that it was only for tenured faculty.

6 So, let's take a 10-minute recess. Please feel free
7 to step down from the witness stand. Sit in the back of the
8 courtroom and read. And I'll be back in 10 minutes. No
9 discussions while I'm gone.

10 THE WITNESS: Can I go to the men's room?

11 THE COURT: Yes.

12 THE WITNESS: Thank you.

13 MR. CERASIA: Your Honor, may I ask what your general
14 schedule is as far as breaks and lunch?

15 THE COURT: I usually take one morning break, one
16 afternoon break, and a lunch break around 1 o'clock.

17 MR. CERASIA: Thank you.

18 THE COURT: More or less, depending on where we are in
19 the testimony.

20 MR. CERASIA: I understand. Thank you.

21 (Recess)

22 (In open court)

23 THE COURT: Please be seated. Dr. Blaser, have you
24 had an opportunity to review the document?

25 THE WITNESS: I have.

G6D3TSE2

Blaser - direct

1 THE COURT: Can you refer the Court to anything that
2 indicates it is for tenured faculty only?

3 THE WITNESS: Your Honor, you asked me to tell the
4 truth, the whole truth, and nothing but the truth.

5 THE COURT: Yes, I did, I did.

6 THE WITNESS: So although I did not find anything in
7 this document that says tenure, it's clear to me that this is
8 about tenured faculty only. You can ask many other witnesses,
9 there may be other documents that say tenure, this is not all
10 research faculty. This is tenured research faculty. But it is
11 not written in this document. There are statements about
12 departmental policies, there are statements about individual
13 agreements, and also about part-time research activity that
14 modify it as well.

15 THE COURT: So --

16 THE WITNESS: So I guess my point was that this
17 document does is not the whole truth.

18 THE COURT: Well, the document is the whole truth. It
19 may not be the whole explanation. But as far as it goes, there
20 is nothing in the document that say it is for tenured faculty
21 only.

22 THE WITNESS: I could not find anything.

23 THE COURT: It is reasonable that people might differ
24 on whether it only applies to tenured faculty.

25 THE WITNESS: I don't believe that that was the

G6D3TSE2

Blaser - direct

1 definition that people on the street that the faculty had in
2 general. This was -- this came about through a long and
3 contentious process over a period of years involving the salary
4 of tenured faculty members. It followed something called the
5 Artman report which is here.

6 And let me just say that in many of these things,
7 errors have been made. But, the intent of the document, as I
8 understood it, is that it dealt with tenured faculty members,
9 and I was not alone in that.

10 THE COURT: Well, under the circumstances,
11 Mr. Cerasia, do you wish to be heard on this?

12 MR. CERASIA: I do, your Honor. I think, as
13 Dr. Blaser said, that this document in practice was applied to
14 tenured faculty. And I haven't heard any foundation from
15 Dr. Tse to show or suggest it was applied to non-tenured
16 research faculty such as herself.

17 So even though the document doesn't have the word
18 "tenured" in it, as Dr. Blaser said, it was the understanding
19 from him and others it applied only to tenured faculty, and
20 there has been no proffer or evidence that it applied to
21 non-tenured faculty research like Dr. Tse.

22 THE COURT: Dr. Tse, can you make an offer of proof to
23 the Court that corroborates your belief that it did apply to
24 non-tenured faculty?

25 MS. TSE: Just by the written text in the document.

G6D3TSE2

Blaser - direct

1 And at this point, perhaps it would help if Dr. Blaser can
2 explain to the Court the difference between a tenured faculty
3 member and a non-tenured faculty member.

4 THE WITNESS: Simple request, complicated answer.

5 MR. CERASIA: Your Honor, may I be heard? That's a
6 very broad question. Does she mean with respect to employment?
7 Because there is a lot of differences between, as your Honor
8 knows from experience, between tenured and non-tenured faculty
9 members.

10 I guess the question is does it relate as to
11 somebody's employment and protections, so to speak, of
12 employment between faculty or tenured and non-tenured. So it
13 is a very broad question.

14 THE COURT: I think as Mr. Cerasia has narrowed it,
15 that would be relevant.

16 MS. TSE: I am specifically referring to the REF and
17 the protection for faculty members who have succeeded to meet
18 the REF for the previous three years. And according to the
19 document, should be protected under safe harbor.

20 A. So, at American universities, tenure is awarded to an
21 individual based on national recognition for a body of
22 scholarly work. Tenure is considered a privilege for someone
23 who has achieved that recognition. And with that recognition
24 there are certain -- there are certain quid pro quos for
25 reaching that level, including certain level of salary support,

G6D3TSE2

Blaser - direct

1 academic freedom, etc.

2 Universities, as they have grown, have developed
3 non-tenure tracks to fulfill other obligations, including
4 clinical tracks for teaching that involve primarily in the care
5 of patients at medical schools; educational tracks, teaching
6 only; and research tracks, research only.

7 Tenured faculty have privileges, including support of
8 salary, that non-tenured faculty do not have.

9 It is my understanding, and was certainly over the
10 time with the development of this policy, that the issue of REF
11 really was only an issue for the tenured faculty. Because the
12 non-tenured faculty had an obligation to raise 100 percent of
13 their salary all the time, whether through educational,
14 clinical, or research efforts.

15 THE COURT: Dr. Tse, let me ask you as an offer of
16 proof, how did you come in to possession of this document?

17 MS. TSE: It was discovered. I came across it in
18 discovery. And then it was distributed as well.

19 THE COURT: Was it distributed to you while you were
20 on the faculty?

21 MS. TSE: I am trying to look through. I cannot say
22 without looking through my records as to whether I have
23 received it.

24 THE COURT: Because I think that that might be
25 significant in establishing whether NYU thought it applied to

G6D3TSE2

Blaser - direct

1 you.

2 MS. TSE: I will see what I can find, but at this
3 point, I cannot say for sure --

4 THE COURT: All right.

5 MS. TSE: -- that I have received it directly.

6 THE COURT: All right. Now, what I would like to do
7 to be efficient, I am going to say that Plaintiff's Exhibit
8 10 -- have I already received this in evidence?

9 MS. TSE: Yes, you did.

10 THE COURT: I will now say that it is received subject
11 to connection. Which means that should its relevance be
12 established later on, it will be received in full. But right
13 now it's received subject to connection.

14 Now, do you have many questions on this document for
15 Dr. Blaser?

16 MS. TSE: I do have some additional ones.

17 THE COURT: In terms of an estimate of time, how much
18 more time do you think you need to talk or question Dr. Blaser
19 on this particular document?

20 MS. TSE: One or two more questions.

21 THE COURT: Fine.

22 MS. TSE: At the moment.

23 Q. All right. So to try and see if we can resolve the issue
24 of who the policy applies to, given that the policy doesn't say
25 so in so many words, can I refer you back to Exhibit 8, which

G6D3TSE2

Blaser - direct

1 is your letter to me regarding my REF. Do you still have that
2 exhibit?

3 A. Yes, I do.

4 Q. Somewhere in there, which is not underscored, but if we go
5 to the third paragraph starting with the dean's letter, now, it
6 says to the second sentence into the paragraph, "Each full-time
7 faculty member in the clinical departments is expected to have
8 achieved extramural funding support for at least 50 percent of
9 the portion of his or her salary allocated to conduct research
10 as of September 2008 and continuing thereafter in accordance
11 with increasing percentages for subsequent years."

12 And once again, given that it's not stated clearly,
13 the REF applies to both tenured as well as non-tenured faculty?

14 A. That's a question for me?

15 Q. Yes. I'm sorry.

16 A. Yes, so, this letter of 2009 came as the policy was being
17 developed. It was being developed over a series of years. And
18 our position for you and for everyone in the department who was
19 on the research track is that they had to achieve 100 percent
20 of their salary just as you had in that year. And this "at
21 least 50 percent" was probably an error because it really was
22 100 percent.

23 Q. Okay. Exhibit 9 is actually an earlier version of Exhibit
24 10 and I think what we --

25 THE COURT: Bear with me just a second. Dr. Blaser,

G6D3TSE2

Blaser - direct

1 on Exhibit 8, are you saying that that reference to 50 percent
2 of the portion of his or her salary is a mistake?

3 THE WITNESS: I believe so.

4 THE COURT: Was a corrective letter sent out?

5 THE WITNESS: I don't know.

6 THE COURT: This was under your signature, correct?

7 THE WITNESS: That's correct.

8 THE COURT: All right. I'm sorry.

9 THE WITNESS: Yes. Let me also say we had hundreds of
10 these letters. And it was a time when it was evolving. But, I
11 believe that if you discuss it with other witnesses, you will
12 find that the school's policy for people on the research track
13 was quite clear. Despite this letter.

14 THE COURT: I'm sorry for the interruption, Dr. Tse,
15 please continue.

16 Q. By "quite clear," what exactly do you mean? Because the
17 reason why I pose that question --

18 THE COURT: No. You've asked him a question. Let him
19 answer it.

20 A. As a matter of practice, our understanding was that members
21 of the non-tenured research track had to have 100 percent
22 support for their salary. This is how the department operated
23 for the full time that I was chair of medicine. And I don't
24 believe there was any dispute about that.

25 Q. How do you convey that information to the faculty member?

G6D3TSE2

Blaser - direct

1 Because besides the letter that we are looking at, Exhibit 8, I
2 have received letters previous to that, and it would state the
3 percentage of the portion of my salary that is allocated to
4 conducting research, in my case that would be 100 percent, and
5 the REF. Are you telling me now that that's incorrect? Or
6 cannot be taken seriously?

7 MR. CERASIA: Objection.

8 THE COURT: No, I'll allow the question.

9 A. From my role as an administrator when errors were made, I
10 accept responsibility. Although, I will say that in general,
11 it was well known by both faculty and administration that
12 people on the research track had to raise 100 percent of their
13 salary, which was different from people on the tenured track.

14 Q. It is now getting even more confusing, because first you
15 said that Exhibit 10 applies only to tenured faculty. And now
16 you said that research faculty is different from tenured
17 faculty. And Exhibit 10 specifically states on the face page
18 that it is a policy on performance expectations for research
19 faculty.

20 MR. CERASIA: Objection, your Honor. That's
21 argumentative.

22 THE COURT: Is that a question?

23 MS. TSE: Yes. It is a question, because I am asking
24 or I am pointing out to Dr. Blaser his conflicting statements.

25 THE COURT: This isn't the time for that. I agree

G6D3TSE2

Blaser - direct

1 with Mr. Cerasia that that's argumentative. Ask a question of
2 Dr. Blaser. Don't argue with him.

3 Q. Then can you please explain to the Court how research
4 faculty knows or knew, because we are going back to 2010, 2011,
5 whether they are meeting their REF or not? When each year, we
6 get a letter saying that you are expected to meet this certain
7 percentage or to support a certain percentage of your salary,
8 when that is actually not the case.

9 A. Dr. Tse, I'm not aware of any other case in which a
10 research faculty member protested that they should not be held
11 accountable to 100 percent of their salary. Not over the 12
12 years that I was department chair. I don't believe you raised
13 that objection either.

14 THE COURT: Dr. Tse, I think we should move on.

15 MS. TSE: Yes. Given that we have issues which cannot
16 be answered regarding Exhibit 10, I will not discuss further
17 Exhibit 9, but would like to reserve the option of submitting
18 that later on.

19 THE COURT: Well, the difficulty of course is that
20 Dr. Blaser's time here in court is somewhat limited, which is
21 why I said that if you had additional questions for him on
22 Exhibit 10, it would make sense to ask him now, while he is
23 here. And of course if it turns out that Exhibit 10 is not
24 relevant and therefore not received in evidence, then his
25 testimony about it would be stricken as well.

G6D3TSE2

Blaser - direct

1 MS. TSE: Understood. Dr. Abramson, who most likely
2 issued this policy, because he is the vice dean for education
3 faculty and academic affairs, will be testifying on Wednesday.

4 THE COURT: All right.

5 Q. We will go on to Exhibit 11 which, that was excerpted from
6 an NIH grant application that was submitted by Dr. Reibman in
7 July 2010.

8 MS. TSE: May I approach, your Honor?

9 THE COURT: You may.

10 MR. CERASIA: To the extent this is being offered,
11 your Honor, I have no objection to 11.

12 THE COURT: Plaintiff's Exhibit 11 received in
13 evidence.

14 (Plaintiff's Exhibit 11 received in evidence)

15 THE WITNESS: Yes.

16 Q. Does that confirm for you, Dr. Blaser, that Dr. Tse was
17 trying to the best of her ability to use data that was
18 generated previously, "previous" meaning before, she was
19 removed as the flow cytometry core director to apply for
20 extramural funding?

21 A. Exhibit 11 --

22 MR. CERASIA: Objection, your Honor.

23 THE COURT: I'm not sure I understand the question,
24 Dr. Tse. So I'll sustain the objection as to form.

25 Q. All right. Let me point out the relevant information here.

G6D3TSE2

Blaser - direct

1 Face page, section 14, this is a typical application form for
2 NIH grants. On page 14, the project director principal
3 investigator was Dr. Joan Reibman. Is that correct?

4 A. Yes.

5 THE COURT: Paragraph 14?

6 THE WITNESS: Item 14.

7 MS. TSE: Yes, item 14.

8 Q. And the second page, under profile, senior or key person,
9 the boxes in blue, Doris Tse in the top box, and project row
10 PDPI, which is abbreviation for project director project
11 investigator.

12 A. I'm sorry. What is your question?

13 Q. My question is can you confirm to the Court that I have
14 been, in the best ability, without laboratory assistants,
15 nonetheless applied for extramural funding?

16 MR. CERASIA: Objection.

17 THE COURT: I'm not sure I understand the question.
18 Are you asking him to confirm what this document says?

19 MS. TSE: Yes. Which is evidence that I was, with
20 best of intentions, applying for extramural funding to meet
21 NYU's REF.

22 THE COURT: Well, I think the document speaks for
23 itself. So it is not clear what additional information about
24 this document Dr. Blaser can give me.

25 MS. TSE: All right. We'll move on to Exhibit 12.

G6D3TSE2

Blaser - direct

1 May I approach, your Honor?

2 THE COURT: You may.

3 MS. TSE: This is a letter from you to Dr. Tse dated
4 January 4, 2011. It's Bate stamped NYU 003227. So this is a
5 letter that you sent to Dr. Tse.

6 THE COURT: No objection?

7 MR. CERASIA: No objection, your Honor.

8 THE COURT: Plaintiff's Exhibit 12 received in
9 evidence.

10 (Plaintiff's Exhibit 12 received in evidence)

11 A. Yes, I've reviewed it.

12 Q. This is a letter that you sent to Dr. Tse terminating her
13 appointment as associate professor of medicine in research.
14 You did not articulate the reason for her termination in the
15 letter?

16 A. That's correct.

17 Q. We will move on to exhibit 13. Bate stamped NYU 003690 and
18 that is a memorandum from Dr. Abramson to department chairs.

19 MS. TSE: May I, your Honor?

20 THE COURT: Yes.

21 MR. CERASIA: I have no objection to Plaintiff Exhibit
22 13.

23 THE COURT: Plaintiff's Exhibit 13 received in
24 evidence.

25 (Plaintiff's Exhibit 13 received in evidence)

G6D3TSE2

Blaser - direct

1 A. Yes, I've reviewed it.

2 Q. All right. So, at the time that you terminated Dr. Tse's
3 appointment, did you realize that she belonged to what is known
4 as a protected class?

5 A. This letter was very --

6 MS. TSE: Sorry. I'm sorry. That was a reminder for
7 me to take my medication.

8 THE COURT: Do you need to do it now?

9 MS. TSE: No, I can wrap up with Dr. Blaser before.

10 THE COURT: Okay.

11 A. This letter states that in recent weeks we have -- this is
12 from 2007. "We've had a number of inquiries with respect to
13 policy regarding notification of non-reappointment for
14 non-tenured faculty who are not on a tenured track." And it
15 continues "under these provisions, appointment to a non-tenured
16 position shall be for a definite period of time not exceeding
17 one academic year unless otherwise specified, and shall
18 automatically terminate at the close of that period, unless
19 there is official notice of renewal. Under this provision, no
20 notice of non-reappointment is required. We recommend,
21 however, as a matter of good practice, that three months'
22 notice of non-reappointment be given to faculty on the
23 full-time clinician investigator/educator and research/educator
24 tracks.

25 "In this connection, this is to advise you that you

G6D3TSE2

Blaser - direct

1 should review your full-time non-tenure eligible faculty
2 annually, and send written notice to those individuals whom you
3 do not intend to reappoint after August 31, 2007." It says
4 "There may be individuals for whom you may extend their
5 appointment beyond September 1st, 2007 if that is required to
6 provide three months' notice. Since these appointments
7 terminate automatically, it is not necessary to state a reason
8 for non-reappointment. The non-reappointment, however, cannot
9 be based on unlawfully discriminatory factors such as gender,
10 race, age, or retaliation for exercising protective activity,
11 such as complaining about harassment or violations of law.

12 "In the event a non-reappointment is challenged, the
13 chair should be prepared to articulate a non-discriminatory
14 reason."

15 And that -- that's the -- I can read the rest of the
16 text if you wish.

17 (Continued on next page)

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25

G6D5tse3

Blaser - direct

1 BY MS. TSE:

2 Q. No, that's quite all right.

3 Since you testified earlier that you were not aware
4 that Dr. Tse was a qualified individual under the ADA, did you
5 then -- did you not consider it necessary to articulate a
6 non-discriminatory reason for her termination?

7 MR. CERASIA: Objection.

8 THE COURT: Sustained.

9 MS. TSE: May I rephrase?

10 THE COURT: Sure.

11 Q. You testified earlier that --

12 A. Today or in my deposition?

13 Q. Today.

14 A. Uh-huh.

15 Q. -- that you were not aware that Dr. Tse was a qualified
16 individual under the Americans with Disabilities Act?

17 THE COURT: I don't think he testified that he did not
18 know. I think one of the exhibits suggested he did know about
19 your condition. I think he testified that he isn't sure about
20 whether he was told by Mr. Odom.

21 BY MS. TSE:

22 Q. I interpret that to mean that Dr. Blaser did not understand
23 the legal ramifications of that status where Dr. Tse was
24 concerned; is that correct?

25 A. I don't understand your question.

G6D5tse3

Blaser - direct

1 Q. All right, we will try it again.

2 From my May 13th, 2010 letter and also from the letter
3 that you wrote Dr. Glickman in 2005, you were clearly aware
4 that I have a medical impairment?

5 THE COURT: The question should be were you aware.

6 Q. Were you aware that I have -- or Dr. Tse -- had medical
7 impairments which could affect her performance as a member of
8 the research faculty?

9 MR. CERASIA: Objection.

10 THE COURT: Can you answer that, Dr. Blaser?

11 THE WITNESS: I'm not exactly sure what your question
12 means.

13 THE COURT: Then don't answer it.

14 THE WITNESS: Okay.

15 THE COURT: Dr. Tse, what are you trying to ask?

16 MS. TSE: I'm trying to establish whether Dr. Blaser
17 was aware that I was a disabled individual, or more
18 specifically, I had medical impairments that could affect my
19 performance as a member of the NYU faculty. Dr. Blaser is a
20 physician so it is not difficult to -- for him to project from
21 an individual's medical issues to their ability to perform in
22 the job.

23 THE WITNESS: I was not privy to your medical records
24 but it was a matter of record that you had a disability, and I
25 think in one or two of the earlier letters we said that you

G6D5tse3

Blaser - direct

1 performed very well regardless of your disability.

2 BY MS. TSE:

3 Q. And in your opinion, what changed?

4 MR. CERASIA: Objection.

5 THE COURT: Sustained.

6 Q. All right. I will rephrase that.

7 What, in your opinion, caused me to fail to meet my
8 REF?

9 A. You're -- as a non-tenured faculty member your REF was 100
10 percent. When you were dismissed as core director you had a
11 big hole in your salary and you had the opportunity to -- in
12 fact, usually as a matter of practice we gave people three
13 months of notice. In your case I think we gave you about nine
14 months, in total, to try to come up with a situation where you
15 could be funded. When you requested long-term disability, the
16 department supported that request to try to help you. So, once
17 you lost the position as core director, then in order to stay
18 on the faculty at 100 percent funding you had to find
19 alternative sources of support, as with every other member of
20 the research faculty.

21 Q. And besides common understanding, as you put it, could you
22 produce anything in writing, a notice, to members of the
23 research faculty in your department that that is what the
24 school expects them to do?

25 MR. CERASIA: Objection.

G6D5tse3

Blaser - direct

1 THE COURT: Bear with me a second.

2 (Pause)

3 THE COURT: Dr. Tse, would you rephrase that question?

4 MS. TSE: Yes. Of course, your Honor.

5 BY MS. TSE:

6 Q. So far --

7 THE COURT: No, no, don't sum up. Just ask a specific
8 question. Refer to part of the document if necessary, but just
9 focus in on this particular document.

10 Q. Would you be able to produce any documents or notices or
11 e-mails that you distributed to members of the research faculty
12 in your department because it is your responsibility to do so
13 to show the Court that they were expected to come up with 100
14 percent REF?

15 MR. CERASIA: Objection.

16 THE COURT: Mr. Cerasia, state the basis for the
17 objection? Maybe this will help move this along.

18 MR. CERASIA: Well, I think there is a couple
19 questions in there but she is asking him about discovery
20 matters. It is her obligation and burden of proof to come
21 forward with documents showing what her requirements were or
22 what her requirements were not. But to ask him now to produce
23 documents or scroll in his head documents that he can produce
24 to your Honor is much too late. That's what discovery was for
25 if she wanted to pursue that.

G6D5tse3

Blaser - direct

1 MS. TSE: Objections, your Honor --

2 MR. CERASIA: He has already testified that every --
3 since the 12 years he was the chair of the department that
4 every non-tenured faculty member was required to come up with
5 100 percent of his or her funding to support salary.

6 THE COURT: Okay. Bear with me one second.

7 (pause)

8 MR. CERASIA: Your Honor, one other thing?

9 THE COURT: Sure.

10 MR. CERASIA: I don't think, prior to these questions
11 being asked, that anywhere throughout this entire case there
12 was ever a contention that Dr. Tse didn't know that she needed
13 100 percent funding. Even if she is now contending that it was
14 50 percent or 60 percent she has never contended that during
15 the time period in question she had more than 35 percent of
16 extramural funding support. So, it seems to me we are arguing
17 over an irrelevant point.

18 THE COURT: Well, I tend to agree with you.

19 I am looking at the 56.1 statements of NYU,
20 particularly paragraphs 63, 64, and 66 which would suggest that
21 it was not always 100 percent that they were -- the non-tenured
22 research faculty were expected to come up with. But, any of
23 the numbers contained in here certainly don't go below the
24 threshold of 50 percent.

25 So, Dr. Tse, where are we going with this line of

G6D5tse3

Blaser - direct

1 questioning?

2 MS. TSE: Basically, I would just like or I believe
3 that we need to determine where things stood at the time I was
4 terminated. When presented --

5 THE COURT: Where what things stood at the time you
6 were terminated?

7 MS. TSE: When presented with Exhibit 10 which would
8 have provided safe harbor --

9 THE COURT: If it applies to you.

10 MS. TSE: Yes, Dr. Blaser is claiming that it does not
11 apply to non-tenured faculty but nowhere in that document was
12 it specified that it only applies to tenured faculty.

13 THE COURT: We have been there, Dr. Tse, I made my
14 ruling, so why aren't we moving on?

15 MS. TSE: All right.

16 The other issue then is how much am I expected to come
17 up with percent REF. And when Dr. Blaser was asked, he
18 basically said that 50 percent is not accurate, after which he
19 said it's common knowledge that it has to be a hundred percent.
20 That is when I asked him whether he has sent out any notices
21 stating such.

22 THE COURT: I don't think that Dr. Blaser is the
23 person that you need to talk to about this. I think that
24 perhaps Lucy Cribben will be somebody that you can question
25 about this, based on her affidavit in the --

G6D5tse3

Blaser - direct

1 MS. TSE: All right, I will. I have just one more
2 question for Dr. Blaser.

3 THE COURT: Okay.

4 MS. TSE: That would be Exhibit 14 which was actually
5 submitted by NYU.

6 MR. CERASIA: No objection, your Honor.

7 THE COURT: Plaintiff's Exhibit 14 received in
8 evidence.

9 (Plaintiff's Exhibit 14 received in evidence)

10 BY MS. TSE:

11 Q. This letter was --

12 A. Yes, I have read it.

13 Q. The letter was provided by Lucy Cribben to NYU counsel. My
14 question to you is when you terminated Dr. Tse's appointment
15 three months earlier, given that both Dr. Ayyappa and Dr. Tse
16 were both associate research professors, did you recognize a
17 difference between those two employees?

18 MR. CERASIA: Objection.

19 THE COURT: What is the date of the letter where you
20 were terminated?

21 MS. TSE: January 4th.

22 THE COURT: And this is in March?

23 MS. TSE: 2011. This one is in March.

24 THE COURT: Okay.

25 MS. TSE: I am addressing the issue of comparators.

G6D5tse3

Blaser - direct

1 THE COURT: I don't think that this is -- well, it may
2 be a person who was in the same position but your question
3 is -- I assume that you are saying that Dr. Ayyappa was not
4 disabled?

5 MS. TSE: I was asking Dr. Blaser whether he sees a
6 difference between terminating my employment and Dr. Ayyappa's.

7 MR. CERASIA: Objection, your Honor.

8 THE COURT: Sustained.

9 BY MS. TSE:

10 Q. Neither one of those letters justify cause for termination?

11 MR. CERASIA: Objection.

12 THE COURT: But I don't know that there is an
13 obligation to do so based on the 2007 letter.

14 MS. TSE: I interpreted the 2000 letter to mean that
15 if your appointment is not renewed it would run to the end of
16 the academic year. All right? So, my appointment did not run
17 to the end of the academic year. Technically it ended August
18 31st, 2010.

19 THE COURT: I'm referring to Plaintiff's Exhibit 13,
20 the 2007 letter.

21 MS. TSE: Yes. It said that if the appointment is not
22 renewed it would automatically terminate.

23 THE COURT: I'm still not sure what your question is
24 in relation to Dr. Ayyappa.

25 BY MS. TSE:

G6D5tse3

Blaser - direct

1 Q. Just to simplify, my question is did Dr. Blaser, at the
2 time, see any difference between me and Dr. Ayyappa? Both were
3 associate research professors in the department and both were
4 employees of NYU.

5 MR. CERASIA: Objection.

6 THE COURT: Yes, sustained.

7 Dr. Tse, I am not seeing where you are going with
8 this. Dr. Ayyappa's letter is March 30th, 2011, yours was
9 January. I don't know how many people --

10 MS. TSE: I'm sorry, your Honor.

11 THE COURT: I don't know how many people are dismissed
12 or not retired, but between Exhibit 13 and -- I don't know that
13 they had to give a reason when you were terminated.

14 MS. TSE: All right. I need to make my question more
15 specific.

16 You were aware by the time I was terminated that I
17 belonged to a protected class or I was a qualified individual
18 under the ADA or, minimally, that I have disabilities.

19 MR. CERASIA: Objection.

20 THE COURT: Would you break it down?

21 MS. TSE: All right. Let's put it in the simplest
22 form.

23 THE COURT: That would be good.

24 BY MS. TSE:

25 Q. So, first of all, I sent you a letter around May 2010

G6D5tse3

Blaser - direct

1 informing you, among other things, that I have disabilities
2 which --

3 THE COURT: What was the first sentence of that
4 letter, though?

5 MS. TSE: The first sentence is that --

6 THE WITNESS: I am hereby requesting long-term
7 disability.

8 MS. TSE: Yes, but you cannot ask for long-term
9 disability leave unless you are disabled, so --

10 THE COURT: But if you are asking for the leave as
11 opposed to asking for an accommodation --

12 MS. TSE: We will hear from Mr. Odom, the sequence of
13 those events.

14 THE COURT: Okay.

15 BY MS. TSE:

16 Q. My question to Dr. Blaser is, May 2010 he became aware that
17 I have disabilities which preclude me from performing my duties
18 as an associate research professor. I was terminated January
19 4th, 2011, and three months later he terminated someone,
20 Dr. Ayyappa, who has the same appointment level as myself, an
21 associate research professor.

22 Question: Do you see any difference between Dr. Tse
23 and Dr. Ayyappa?

24 MR. CERASIA: Objection.

25 THE COURT: Sustained.

G6D5tse3

Blaser - cross

1 To your knowledge, did Dr. Ayyappa have any
2 disabilities?

3 THE WITNESS: I was not aware of any disabilities.

4 THE COURT: All right.

5 I don't know that you can get more out of Dr. Blaser.

6 MS. TSE: I have no more questions for Dr. Blaser.

7 THE COURT: Thank you, Dr. Tse.

8 Mr. Cerasia?

9 MR. CERASIA: Sure. May I proceed, your Honor?

10 THE COURT: Yes.

11 MR. CERASIA: Thanks.

12 CROSS EXAMINATION

13 BY MR. CERASIA:

14 Q. Good afternoon, Dr. Blaser.

15 You testified that you spent 12 years as the Chair of
16 the Department of Medicine at NYU. Can you just tell us what
17 your start date and end dates were?

18 A. The start date was April 1st, 2000, and the end date, I
19 believe, was December 18th, 2012.

20 Q. I am going to refer you to Plaintiff's Exhibit 2 which is
21 the March 4, 2010 letter from Dr. Valentine to Dr. Tse about
22 her removal as the core director.

23 A. I don't think I still have that -- oh yes. I have it, I
24 have it.

25 Q. And the department kept Dr. Tse on from April 1, 2010,

G6D5tse3

Blaser - cross

1 until April 4th of 2011?

2 A. That's correct.

3 Q. Why did you give her so much time to remain employed at NYU
4 after she was removed as the core director?

5 A. We were trying to help her. We were trying to give her
6 more time so that she could find alternative funding.

7 Q. In your 12 years as Chair of the Department of Medicine,
8 were you aware of any other non-tenured research faculty member
9 who received one year and three days of salary support --

10 A. I don't.

11 Q. -- from the department?

12 A. I don't believe so.

13 Q. Between June 1st of 2010 and April 4 of 2011, did Dr. Tse
14 ever specifically come to you and ask you to identify any
15 principal investigators or tenured faculty members that she
16 could collaborate with to get funding?

17 A. I don't believe so.

18 Q. If she had done that, would you have helped her?

19 THE COURT: No, no, she didn't. He doesn't remember.
20 Let's move on.

21 BY MR. CERASIA:

22 Q. At any point after Dr. Tse was removed as the director of
23 the core, did she ever come to you with any specific research
24 project that she wanted to pursue to get grant money?

25 A. I don't believe so.

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Blaser - cross

1 MS. TSE: Objection.

2 THE COURT: Basis?

3 MS. TSE: Both Dr. Blaser and I are well aware of what
4 is needed to apply for extramural funding and --

5 THE COURT: Well, I think I know where you are going
6 with this. I will overrule the objection.

7 Continue, please, Mr. Cerasia.

8 BY MR. CERASIA:

9 Q. Did Dr. Tse ever come and brainstorm, so to speak, with you
10 about research proposals or funding that she wanted to pursue?

11 A. No.

12 Q. Between June 1st of 2010 and April 4th of 2011, did Dr. Tse
13 ever ask you for any specific accommodation for her medical
14 condition?

15 A. I don't believe so.

16 Q. Between June 1st, 2010 and April 4th of 2011, did Dr. Tse
17 ever come to you or in any way ask you or the School of
18 Medicine for money to help pay the cost for use of equipment,
19 machines, or people within the laboratory?

20 A. I don't believe so.

21 Q. During the time that you were the Chair of the Department
22 of Medicine, were you aware of any part-time non-tenured
23 research faculty who worked within the department?

24 A. I am not aware. It is possible but I'm not aware of any.

25 Q. At any point from the time Dr. Tse got removed as the core

G6D5tse3

Blaser - cross

1 director until her termination in April of 2011, did she ever
2 identify for you any job that she felt was vacant at NYU?

3 A. No.

4 MS. TSE: Objection, your Honor.

5 THE COURT: Basis?

6 MS. TSE: I will not have access to that information.

7 THE COURT: That may be, but the question was that she
8 felt was vacant at NYU, which is a more subjective measure so I
9 don't know that the answer would change. So, I will overrule
10 the objection.

11 BY MR. CERASIA:

12 Q. From the time Dr. Tse was removed as the core director
13 until April 4th of 2011, did you ever become aware of any
14 vacant job at NYU for which she was qualified?

15 A. No.

16 MS. TSE: Can we be specific --

17 THE COURT: Just, just --

18 MS. TSE: I'm sorry.

19 BY MR. CERASIA:

20 Q. I am going to refer you to Plaintiff's Exhibit 12 which is
21 your January 4, 2011 letter to Dr. Tse.

22 A. Yes, I have it.

23 Q. Is that the standard type of letter that you issued to
24 non-tenured research faculty to let them know they would not be
25 renewed?

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Blaser - cross

1 A. More or less, yes.

2 Q. At any point after that letter was sent to Dr. Tse did she
3 ever come to speak to you about the letter?

4 A. I don't believe so.

5 Q. Why is it that the School of -- excuse me -- that the
6 Department of Medicine ended her employment at that time?

7 A. At that point she only had 5 percent effort that was
8 covered by grants and by that time it had been about nine
9 months after she had been removed as core director.

10 Q. Does that mean that either the school or the department was
11 supporting 95 percent of her salary by administrative funds?

12 A. By that point, yes.

13 Q. Why can't the Department of Medicine pay salary of
14 non-tenured faculty members who do not have grant funding?

15 A. Well, the Department of Medicine could but --

16 MS. TSE: Objection.

17 THE COURT: No. Dr. Tse, the time to object is after
18 the question has been asked and before --

19 MS. TSE: I'm sorry, your Honor.

20 THE COURT: All right.

21 You may answer, Dr. Blaser.

22 THE WITNESS: The Department of Medicine could do that
23 but, in practice, there is just not enough money to do that and
24 our primary obligation is for our tenured faculty members. And
25 that is true at NYU and just about every university I am aware

G6D5tse3

Blaser - cross

1 of.

2 BY MR. CERASIA:

3 Q. Is the NYU School of Medicine a not-for-profit?

4 A. I believe so.

5 Q. At any point after January 4, 2011, did Dr. Tse ever ask
6 you for any kind of accommodation to extend her employment?

7 A. I don't believe so.

8 Q. After -- strike that.

9 In your opinion, was there anything more that you or
10 the Department could have done after June 1st, 2010, to get
11 Dr. Tse any additional extramural funding?

12 A. At one point there was a discussion in a meeting I think
13 with Mr. Odom and Ms. Cribben that were present where we had a
14 discussion where we urged her to look for further support. I
15 think that the grant proposal that was submitted with
16 Dr. Reibman is one example of her seeking to get support. I
17 think, ultimately, that grant was not funded.

18 Q. If you could look at Plaintiff's Exhibit 11, which is a
19 July 2010 grant application submission with Dr. Reibman --

20 A. Yes, I have it.

21 Q. -- is that what you were just referring to?

22 A. Yes.

23 Q. Is it your understanding that that was an unsuccessful
24 grant application?

25 A. That's my understanding.

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Blaser - cross

1 Q. If you look at page 1 under 11, Section 11 -- let me ask
2 you this. What was Dr. Reibman or what is Dr. Reibman's area
3 of speciality?

4 A. Dr. Reibman is a physician scientist who studies the --
5 primarily studies the lung and studies immune responses in the
6 lung.

7 Q. Were you aware, at this time, of Dr. Reibman having any
8 specialization in HIV?

9 A. She has worked on HIV.

10 Q. Was that Dr. Tse's area of specialization?

11 A. Yes.

12 MS. TSE: May I?

13 THE COURT: You will have an opportunity to ask
14 further questions when Mr. Cerasia is finished.

15 MS. TSE: All right. I will.

16 BY MR. CERASIA:

17 Q. You referred to a meeting that you attended with Dr. Tse,
18 Mr. Odom, and Ms. Cribben. Do you remember when that meeting
19 took place?

20 A. I don't exactly remember it but I have seen documents. I
21 think it was around August of 2010.

22 Q. And I think you testified that you discussed generally with
23 Dr. Tse about some opportunities or where she could look for
24 funding sources, right?

25 A. I believe so. I think we also had a discussion about

G6D5tse3

Blaser - cross

1 long-term disability.

2 Q. And what was the discussion that you had about long-term
3 disability? What you testified to on your direct examination?

4 A. I think that Dr. Tse wanted to apply for long-term
5 disability for 65 percent of her effort but Mr. Odom said it is
6 all or none, you have to apply for a hundred percent.

7 Q. And you say you were -- sorry.

8 A. And the department and the school favored that option.

9 Q. At any point after that August 2010 meeting do you have any
10 recollection of Dr. Tse ever coming to you to ask you for any
11 kind of accommodation for her medical condition?

12 A. I have no such recollection.

13 Q. Now, with respect to the May 13th, 2010 letter which is
14 Plaintiff's Exhibit 6 that Dr. Tse sent to you about her
15 long-term disability --

16 A. Oh, yes -- yes, I have it.

17 Q. At any point after receiving that letter, did Dr. Tse come
18 to you to tell you that she was applying for long term
19 disability?

20 A. I don't believe so.

21 Q. Did you ever direct her, at any point before May 13, 2010,
22 to apply for long term disability?

23 A. I don't believe so.

24 Q. Even after the August 2010 meeting, did you ever direct her
25 that she had to apply for long term disability?

G6D5tse3

Blaser - redirect

1 A. No.

2 Q. After Dr. Tse was removed as the director of the core in
3 April 2010, did you want her to exceed in obtaining funding to
4 continue her employment at NYU?

5 A. Yes.

6 Q. Did you have any hostility or animosity towards her because
7 of her medical condition?

8 A. I did not.

9 MR. CERASIA: May I have a minute, your Honor? I may
10 be done.

11 THE COURT: Okay.

12 (Counsel conferring)

13 MR. CERASIA: I have no other questions at this time.

14 THE COURT: Okay.

15 MR. CERASIA: Thank you, Dr. Blaser.

16 MS. TSE: Redirect, your Honor?

17 THE COURT: Yes.

18 REDIRECT EXAMINATION

19 BY MS. TSE:

20 Q. I think this will be a good time to bring up plaintiff's --

21 THE COURT: Dr. Tse, please remain seated and use the
22 microphone.

23 Q. -- requesting permission to bring up plaintiff's trial
24 Exhibit 9, it is Bates stamped NYU 003721.

25 May I approach, your Honor?

G6D5tse3

Blaser - redirect

1 THE COURT: You may.

2 Q. This is a notice titled Process for Implementing Research
3 Faculty.

4 THE COURT: Actually, you know the better way to do
5 this is to show it to Dr. Blaser and ask him what it is.

6 MS. TSE: Sorry.

7 May I collect the ones that I gave to you because I
8 have to recycle them.

9 THE COURT: Yes, but why don't we wait until you are
10 through and Mr. Cerasia is through, so he doesn't have to keep
11 getting documents.

12 Is there a particular part of Plaintiff Exhibit 9 that
13 you wish to direct Dr. Blaser's attention to?

14 MS. TSE: Yes; that would be paragraph 9.

15 THE COURT: I'm sorry, what number?

16 MS. TSE: Paragraph 9 on page 2.

17 THE COURT: Okay.

18 MS. TSE: NYU 003722 under junior faculty.

19 THE WITNESS: Yes, I am ready.

20 MR. CERASIA: I have no objection to the exhibit, your
21 Honor.

22 THE COURT: All right. Plaintiff's Exhibit 9 received
23 in evidence.

24 (Plaintiff's Exhibit 9 received in evidence)

25 MS. TSE: May I proceed?

G6D5tse3

Blaser - redirect

1 THE COURT: Yes, please.

2 BY MS. TSE:

3 Q. First of all, can you read that paragraph to the Court?

4 A. Paragraph 9. Junior faculty. In implementing the REF,
5 special consideration shall be given to faculty who are within
6 the first five years after initial appointment as assistant
7 professor ("Junior faculty") whose percentages may be lower
8 while they build their portfolio of research support and who
9 are making progress toward achieving the REF without having
10 achieved it.

11 Q. Do you know of any junior faculty in the research track who
12 were recruited to NYU as tenured members of the faculty?

13 THE COURT: I'm sorry. I don't understand the
14 question.

15 Q. We are referring to junior faculty and this notice applies
16 to research faculty. So, my question -- and there will be
17 subsequent questions, related to the topic.

18 Do you know of any members who are junior faculty that
19 were recruited as tenured members in the research track?

20 A. I believe that this document refers to the tenured faculty
21 and presumably by junior faculty this would mean tenured track
22 faculty, although it is not so stated.

23 Q. Once again, can you find in this document where it says
24 that it applies only to tenured faculty?

25 A. I cannot.

G6D5tse3

Blaser - redirect

1 Q. I am referring to where it says: Faculty who are within
2 the first five years after initial appointment -- can you
3 explain to the Court the significance of five years?

4 A. Not specifically but, in general, faculty on the tenure
5 track have a certain number of years to achieve tenure after
6 they've been appointed. If someone is appointed on the tenure
7 track they may have seven years. It has recently gone up to
8 probably close to 10 years to achieve tenure.

9 Q. Specifically, five years as it applies to achieving the
10 REF.

11 A. I don't understand your question.

12 Q. The paragraph says that special consideration will be given
13 to faculty who are within the first five years after initial
14 appointment?

15 THE COURT: What is the question, though.

16 Q. The question is, in your opinion, would it take five years
17 or as many as five years for someone who is starting out to
18 achieve the school's REF?

19 MR. CERASIA: Objection --

20 MS. TSE: Because.

21 THE COURT: Wait. Wait. Let's hear the rest of this
22 question.

23 Please continue, Dr. Tse.

24 BY MS. TSE:

25 Q. The paragraph is very specific about five years and about

G6D5tse3

Blaser - redirect

1 building a portfolio of research so that progress can be made
2 toward achieving the REF.

3 A. So, Dr. Tse, are you asking me about this paragraph?

4 Q. I am asking you why five years. Why not five months?

5 THE COURT: This is argumentative.

6 MR. CERASIA: Objection.

7 BY MS. TSE:

8 Q. What is the significance of five years, in your opinion?

9 MR. CERASIA: Objection.

10 THE COURT: No, I will allow that.

11 THE WITNESS: First let me say that this is a document
12 provided by the School of Medicine. The Department of Medicine
13 is under the School, we try to understand and apply the
14 policies of the School.

15 My understanding is that this refers to faculty
16 members who are appointed on the tenure track to ultimately
17 achieve tenure and they are given a period of time where they
18 do not have the full obligations of the REF as they're building
19 up their research portfolio. It applies -- my understanding,
20 as you asked me, is that this applies to people on the tenure
21 track.

22 BY MS. TSE:

23 Q. To the best of your recollection, can you name any tenured
24 professors on the research track in the Department of Medicine?

25 MR. CERASIA: Objection.

G6D5tse3

Blaser - redirect

1 THE COURT: I will sustain that as to relevance.

2 Let me ask you something, Dr. Blaser. Does it take
3 time to build-up your REF whether you are tenured or not?

4 THE WITNESS: The appointment of a non-tenured faculty
5 member is different than the appointment of -- tenure is a much
6 greater institutional commitment to an individual, that's why
7 tenure is so prized and so the appointment of people on the
8 tenure track is given to people of unusual promise and they are
9 given the opportunity to ultimately develop into a tenured
10 position.

11 The appointment on the non-tenure track is different.
12 It does not carry the opportunity to get tenure and it is
13 usually in support of someone else's program. Generally what
14 has happened in the past is that a tenured faculty member or a
15 tenured track faculty member would say I would like to appoint
16 so and so -- I would like so and so to be considered for
17 appointment on the non-tenured track to assist me in my work.

18 Currently, in my own laboratory -- I am a researcher
19 as well -- currently, in my own laboratory, I have three
20 members of the faculty who are not on the tenure track. One of
21 them has worked with me for more than 20 years and two others
22 have worked for me for about 10 years. They, and I, understand
23 that the obligation is for our research efforts, collectively,
24 to pay 100 percent of their salary.

25 THE COURT: All right.

G6D5tse3

Blaser - redirect

1 THE WITNESS: And that's the general standard.

2 THE COURT: Now, you have described the individual on
3 tenure track as particularly promising which would mean they
4 are somewhat above the cut, if you will?

5 THE WITNESS: Yes.

6 THE COURT: All right.

7 THE WITNESS: That they are capable of achieving
8 national recognition for a body of scholarly work.

9 THE COURT: All right. And I guess my question is for
10 the gifted tenure-track people, even they might not be able to
11 build-up their REF within the first year or two to
12 expectations, correct?

13 THE WITNESS: Yes.

14 THE COURT: And so, this five-year period is some sort
15 of guideline by which you would expect your particularly gifted
16 people to have made up their full REF?

17 THE WITNESS: Yes. And again, this concept of REF was
18 a concept that was introduced over the -- while I was
19 department chair. There was no REF concept before that and as
20 it came about it was to help -- there were some tenured members
21 of the faculty who were no longer productive in research
22 anymore but they were getting full salaries, so this was an
23 attempt to set standards so that the university would not
24 indefinitely support people who were past their peak of
25 productivity.

G6D5tse3

Blaser - redirect

1 THE COURT: Okay.

2 THE WITNESS: That was the intent. And I think when
3 you discuss this with other witnesses you will find the same
4 position.

5 THE COURT: All right.

6 Dr. Tse, any more questions for Dr. Blaser?

7 MS. TSE: Yes, I do.

8 BY MS. TSE:

9 Q. Plaintiff's Exhibit 39, that is my bio sketch as it was
10 submitted with the grant application with Dr. Reibman.

11 May I approach, your Honor?

12 THE COURT: You may.

13 A. Yes, I have reviewed it.

14 Q. You just testified that my scientific expertise was limited
15 to the HIV field. Can you point out --

16 THE COURT: I don't believe that was his testimony.
17 The question was was that field also something that Dr. Tse was
18 involved in and he said yes. He did not say it was your only
19 field.

20 MS. TSE: All right. I'm sorry.

21 So, in submitting this grant application together with
22 Dr. Reibman and looking over her bio sketch as it was submitted
23 to the NIH, would you agree that Dr. Tse was making serious
24 effort towards meeting her REF?

25 MR. CERASIA: Objection.

G6D5tse3

Blaser - redirect

1 THE COURT: Sustained. I do not see the connection
2 between Exhibit 39 and the level of effort.

3 MS. TSE: I'm sorry, that's 40. Did I make a serious
4 error? No, that's Exhibit 39, I was right in that.

5 My question is actually to dispute NYU counsel's
6 request for Dr. Blaser to testify whether I had asked for help
7 in achieving the required REF.

8 THE COURT: This document 39, does it go beyond 2010
9 when you were --

10 MS. TSE: It was submitted with the grant application
11 with Dr. Blaser which was July 2010 and that would be after I
12 was removed as the CFAR core director.

13 THE COURT: Right, but the question you are asking is
14 whether you made a serious effort to get funding. I don't
15 believe that there has been a question that you were involved
16 with Dr. Reibman in applying for a grant. So, I'm not sure
17 what your question to Dr. Blaser is now.

18 MS. TSE: Dr. Blaser said that I should have sought
19 collaboration or assistance from investigators with funding and
20 basically I asked him, from my bio sketch which showed the
21 history of collaboration with Dr. Reibman, did I make my best
22 effort towards fulfilling my REF.

23 MR. CERASIA: I don't know if that's a question or her
24 proffer.

25 THE COURT: I'm not sure either but this document,

G6D5tse3

Blaser - redirect

1 where does it talk about what you did after you were no longer
2 director of the CFAR flow cytometry core?

3 MS. TSE: The list of publications is -- documents my
4 collaborative efforts or actually my productivity, my research
5 productivity with Dr. Reibman. Mr. Cerasia here has
6 established that essentially I did not ask for assistance so
7 that I can fulfill my REF and I wanted to submit evidence to
8 show otherwise.

9 (Continued on next page)

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G6D3TSE4

Blaser - recross

1 THE COURT: But I'm not sure how Dr. Blaser can
2 testify about that particular thing based on this document. So
3 I'll sustain the objection. Any other questions?

4 MS. TSE: No.

5 MR. CERASIA: Just a few more, Judge.

6 RECROSS EXAMINATION

7 BY MR. CERASIA:

8 Q. Other than Dr. Tse's work with Dr. Reibman in submitting
9 the grant proposal which was Plaintiff Exhibit 11, were you
10 aware of her collaborating with any other principal
11 investigators or tenured faculty after June 1st, 2010?

12 A. I don't remember the specifics, but she had a collaboration
13 with faculty member in Ob/Gyn, I think Dr. Bruce Young. And I
14 think that was for a 5 percent effort.

15 Q. Is there any doubt in your mind, after the August 2010
16 meeting, that Dr. Tse knew that she had to have full funding to
17 keep her employment at NYU?

18 A. No.

19 THE COURT: Sustained as to form.

20 Q. After the August 2010 meeting that you had with Dr. Tse,
21 Mr. Odom, and Ms. Cribben, did you have a belief that in your
22 mind that Dr. Tse understood that she needed to be fully funded
23 to continue her employment at NYU?

24 THE COURT: How would he know what was in her mind?

25 Sustained.

G6D3TSE4

1 Q. Was there anything that Dr. Tse said to you at the
2 August 2010 meeting or after that would lead you to believe
3 that she did not understand that she needed to be fully funded
4 to continue her employment at NYU?

5 A. Not that I recollect.

6 MR. CERASIA: No other questions. Thank you.

7 MS. TSE: One more question then.

8 REDIRECT EXAMINATION

9 BY MS. TSE:

10 Q. Do you remember the exact date of the meeting?

11 A. I know the month and the year.

12 THE COURT: All right, Dr. Blaser, thank you very
13 much. You may step down.

14 THE WITNESS: Thank you.

15 (Witness excused)

16 THE COURT: We are going to take our luncheon recess.
17 Let me caution you that the clock in the back of the courtroom
18 is wrong. It is 1 o'clock. We will resume at 2:15 at which
19 point who will be the witness?

20 MS. TSE: That would be Ms. Sanchez. She's the head
21 of human resources.

22 THE COURT: Nancy Sanchez?

23 MS. TSE: Yes.

24 THE COURT: Enjoy your lunch.

25 MR. CERASIA: Thank you, your Honor. You too.

G6D3TSE4

MS. TSE: Thank you, your Honor.

(Luncheon recess)

(Continued on next page)

G6D3TSE4

Sanchez - direct

1 AFTERNOON SESSION

2 2:15 p.m.

3 THE COURT: Good afternoon, please be seated.

4 MS. TSE: Good afternoon, your Honor.

5 THE COURT: Dr. Tse, are you ready to call your next
6 witness?

7 MS. TSE: Yes. Ms. Sanchez.

8 THE COURT: Hi. Would you remain standing and raise
9 your right hand.

10 (Witness sworn)

11 THE COURT: Please be seated. Pull your chair in.
12 Now would you state your full name, and spell both your first
13 and your last name.

14 THE WITNESS: Sure. It's Nancy, N-A-N-C-Y, Sanchez,
15 S-A-N-C-H-E-Z.

16 THE COURT: You may proceed, Dr. Tse.

17 NANCY SANCHEZ,

18 called as a witness by the Plaintiff,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. TSE:

22 Q. Good afternoon, Ms. Sanchez.

23 A. Hi.

24 Q. I am Dr. Tse, as you probably know already, representing
25 myself.

G6D3TSE4

Sanchez - direct

1 THE COURT: Dr. Tse, move the microphone closer.

2 MS. TSE: Okay.

3 THE COURT: Yes.

4 MS. TSE: It's because I pulled my chair out. Is the
5 this okay now?

6 THE COURT: Yes, this is better. Thank you.

7 Q. Have you testified in court before?

8 A. Yes.

9 Q. Most of my questions hopefully will be yes or no. You will
10 be presented with exhibits. When you need more time to look
11 them over, please let me know.

12 Ms. Sanchez, what is your current position at the NYU
13 Langone Medical Center?

14 A. I'm the senior vice president and vice dean of human
15 resources and organizational development and learning.

16 Q. How many employees do human resources oversee at the
17 medical center?

18 A. Meaning how many employees do we have responsibility for?

19 Q. Yeah.

20 A. 27,000.

21 Q. Of these, how many are faculty members in the school of
22 medicine?

23 A. Compensated or non-compensated?

24 Q. Can you explain to the Court --

25 A. Those that receive salary from the school of medicine or

G6D3TSE4

Sanchez - direct

1 those that only have a faculty appointment.

2 Q. Like adjunct faculty appointments?

3 A. Meaning they're not receiving salary from the institute.

4 About 2,400 currently.

5 Q. How large is the Murray Hill campus for the school of
6 medicine?

7 A. I'm not sure I understand. What do you mean how large?

8 Q. In terms of city blocks, how big is that campus?

9 A. It is a difficult question to answer because we're so
10 spread out now. If you're talking about the sort of what's
11 known as the superblock, it would be from 30th Street to 34th
12 Street on First Avenue.

13 Q. Excluding Bellevue Hospital where most of the department of
14 medicine is located?

15 A. I don't know if that's where most of the department of
16 medicine is located, but yes, it does exclude Bellevue.

17 Q. Is payroll under the purview of human resources?

18 A. No.

19 Q. It's a separate department?

20 A. Correct.

21 Q. So, can you nonetheless give the Court a rough idea of the
22 annual outlay in faculty and staff salaries?

23 A. No. Not without looking it up.

24 Q. Crain's New York reported an \$89 million surplus for the
25 NYU Langone Health System in February of this year. Does that

G6D3TSE4

Sanchez - direct

1 sound about right?

2 MR. CERASIA: Objection.

3 THE COURT: Objection sustained. The witness said she
4 can't tell without looking it up, so she isn't the one to get
5 this information from.

6 Q. Of the 27,000 or so employees under your purview, do you
7 know how many or roughly what percentage falls into the
8 protected class?

9 MR. CERASIA: Objection.

10 THE COURT: Yes. How are you defining protected
11 class?

12 MS. TSE: Those who have reported as being the targets
13 of discrimination for race, color, national origin, sex,
14 disability.

15 THE WITNESS: I'm sorry --

16 MR. CERASIA: Objection, your Honor.

17 THE WITNESS: -- I still don't understand the
18 question.

19 THE COURT: All right. Objection sustained. Break up
20 the categories, but the only one that would probably be
21 relevant here, Dr. Tse, is disability.

22 MS. TSE: All right. I will ask that question then.

23 Q. How many of these employees, faculty and staff, are
24 qualified individuals under the Americans with Disabilities
25 Act?

G6D3TSE4

Sanchez - direct

1 A. I don't know.

2 Q. How would you go about identifying them, and rather, how do
3 you go about identifying them?

4 A. We send out an annual e-mail to the part -- to the
5 employees, and we ask them to self-identify.

6 Q. As a covered entity, how does NYU inform these individuals
7 that they are entitled to reasonable accommodations for their
8 limitations?

9 A. We post the information on the web, plus we send out
10 mailings to the employees.

11 Q. By e-mail or printed mailings?

12 A. We used to do it to the homes. I don't recall off the top
13 of my head in terms in the last few years how we've done it,
14 whether it's been e-mail or we still send mailings to the
15 homes.

16 Q. Are department chairs informed of NYU's obligations under
17 the ADA?

18 A. All faculty and staff are sent the mailings.

19 Q. Specifically, department chairs who are responsible for the
20 caretaking of employees within their department, do they get
21 the same notice or different?

22 A. We send it out to all faculty and staff. That means
23 everybody.

24 Q. I understand that. But, do you send a different one to
25 people or to employees who are in leadership positions who are

G6D3TSE4

Sanchez - direct

1 responsible for people under their management or supervision?

2 A. No.

3 Q. Thank you. Are department administrators trained to
4 identify such individuals and offer them the protection to
5 which they are entitled under the law?

6 A. Department administrators can avail themselves of
7 educational programs that we have that make people aware of how
8 to identify and engage in a conversation with individuals who
9 are in need of an accommodation. Plus, we have an employee
10 relations staff that they are encouraged to reach out to.

11 Q. Is the training mandatory or voluntary for the department
12 administrators?

13 A. I don't remember off the top of my head.

14 Q. Were you the head of human resources from April 2010
15 through 2011?

16 A. Yes.

17 Q. Operational protocols pretty much the same then as it is
18 now?

19 MR. CERASIA: Objection.

20 THE COURT: Sustained.

21 Q. Did any changes take place since 2010 to what you described
22 today or just now?

23 A. Yes. I made reference to the fact that I don't recall if
24 the mailings go out to the homes or if they go out via e-mail
25 so things like that have changed, yes.

G6D3TSE4

Sanchez - direct

1 MS. TSE: Exhibit 4, which has already been admitted
2 into evidence, may I approach the witness?

3 THE COURT: You may.

4 Q. Exhibit 4 is an employment history record at the school of
5 medicine, just to remind you, or if you're not --

6 THE COURT: You can actually ask the witness what it
7 is.

8 MS. TSE: Thank you, your Honor.

9 Q. Do you recognize Exhibit 4 as a record from the human
10 resources department?

11 A. So are you asking me if I recognize the document the way
12 it's printed, or are you asking me if I recognize the
13 information that's on it?

14 Q. Both.

15 A. Okay.

16 Q. Either or both?

17 A. Okay. So the document, no. The information on it, yes.

18 Q. All right. The document was actually provided by NYU
19 because it's Bate stamped as such.

20 A. Okay.

21 Q. Exhibit 15 contains Dr. Tse's time and effort reports.

22 THE COURT: Just a second. You want to show it to the
23 witness? Are you going to ask the witness particular questions
24 about it?

25 MS. TSE: Yes, I am going to ask the witness

G6D3TSE4

Sanchez - direct

1 particular questions about it.

2 Q. Do you recognize those?

3 A. No.

4 Q. You've never seen them before?

5 A. No.

6 Q. All right. Those are time and effort reports for faculty,
7 and they're posted by the NYU School of Medicine.

8 THE COURT: Just a second, please. What exhibit are
9 we talking about?

10 MR. CERASIA: It's not in evidence.

11 MS. TSE: That would be Exhibit 15.

12 THE COURT: I don't believe I have it in my binder.

13 THE WITNESS: Judge, do you want to see it?

14 MS. TSE: It's Tse's time and effort to reports from
15 September 1st, 2007 through August 31, 2010. And the JPTS
16 exhibit number for that is 15A.

17 THE COURT: I do have Plaintiff's Exhibit 15 but the
18 tab was missing. Now I have that.

19 MS. TSE: May I continue?

20 THE COURT: Yes.

21 Q. These were posted and they were posted --

22 THE COURT: Does the witness have a copy of what
23 you're talking about?

24 THE WITNESS: Yes, your Honor.

25 MR. CERASIA: She says she's never seen them. They're

G6D3TSE4

Sanchez - direct

1 not in evidence. I don't want Dr. Tse reading from them, your
2 Honor.

3 THE COURT: Yes, this is correct. This is not a
4 document that you're familiar with?

5 THE WITNESS: No.

6 THE COURT: It's not --

7 MS. TSE: I'm sorry, your Honor.

8 THE COURT: It's not in evidence and this witness is
9 not familiar with it, so it is not clear to me how you're going
10 to use this document with this witness.

11 Q. Are you familiar then with the time and effort system for
12 faculty members of the school?

13 A. I've heard of it, but I'm not familiar with it, no.

14 Q. All right. Would you be able to look at it and explain to
15 the Court at least what is on the papers?

16 THE COURT: I don't think that that's a fair question
17 to ask this witness who has indicated she hasn't seen this
18 before. And I can read, but it's not even in evidence.

19 MS. TSE: All right. We'll skip to the next question.

20 THE WITNESS: Okay.

21 Q. You are aware of what is known as the required extramural
22 funding for research faculty at the school?

23 A. Yes.

24 Q. Can you explain to the Court what that system is about.

25 A. I can explain it from the perspective of being a member of

G6D3TSE4

Sanchez - direct

1 the institution, but not because I oversee it. What it is, is
2 basically a productivity requirement that individuals who are
3 on the tenured track or are tenured are responsible for
4 covering either 50, 55, or 60 percent of their salary,
5 depending upon the timeframe that we're talking about, and
6 that's what it is.

7 Q. Who is responsible for overseeing the enforcement of that
8 system?

9 A. Steve Abramson.

10 Q. What is his position in the school?

11 A. He's the vice dean for faculty affairs.

12 Q. Steven Abramson?

13 A. Yes.

14 THE COURT: Ms. Sanchez, let me ask you: When you
15 defined the system, you referred to tenured faculty. Does it
16 also apply to non-tenured faculty?

17 THE WITNESS: No, not that I am aware of.

18 Q. Do non-tenured faculty have required extramural funding?

19 A. It varies depending upon the department. But for some
20 departments, they're obligated to bring in their entire salary
21 on extramural funding.

22 MS. TSE: All right. In that case, may I approach
23 with Exhibit 8?

24 THE COURT: I'm sorry, the number?

25 MS. TSE: Exhibit 8. It was admitted into evidence.

G6D3TSE4

Sanchez - direct

1 THE COURT: Yes, you may.

2 Q. This is a letter that Dr. Tse received from her department
3 chair, Dr. Blaser, on September 18, 2009. It pertains to the
4 academic year from 2008 to 2009. The second page, the text
5 underlined in red essentially shows that Dr. Tse's REF was
6 100 percent.

7 Do you agree?

8 MR. CERASIA: Objection.

9 THE COURT: Sustained.

10 Q. I will reword. "Your current salary for the 2008 to 2009
11 academic year is \$104,058. Your current support on extramural
12 funding is \$104,058 which meets the AEC performance standards."

13 That would be an REF at 100 percent, is that right?

14 MR. CERASIA: Objection.

15 THE COURT: Sustained. I'm not sure that this witness
16 is familiar with this particular document. But I do have a
17 question if you can answer it, Ms. Sanchez. What is the year
18 for the school? Is it June to June, is it September? How does
19 it work?

20 THE WITNESS: September 1st through August 31.

21 THE COURT: So, a letter sent on September 18, 2009,
22 is talking about the past year's salary?

23 THE WITNESS: Correct.

24 THE COURT: Okay. Proceed, Dr. Tse.

25 BY MS. TSE:

G6D3TSE4

Sanchez - direct

1 Q. If you can go to page one, third paragraph from the top.
2 And if you can read that paragraph to the Court, please.

3 A. The third paragraph?

4 Q. Yes. Starting with "the dean's letter."

5 A. "The dean's letter to the faculty dated March 17, 2008,
6 described performance expectations adopted for research
7 faculty. Each full-time faculty member in the clinical
8 departments is expected to have achieved extramural funding
9 support for at least 50 percent of the portion of his or her
10 salary allocated to conduct research as of September of 2008
11 and continuing thereafter in accordance with increasing
12 percentages for subsequent years. In the case where the
13 department standards exceed the performance standards in the
14 dean's letter, the department standards will be preserved.
15 Performance in terms of acquired extramural funding REF set for
16 an individual faculty member will be taken into account in
17 determining that faculty member's salary in subsequent years."

18 Q. If you were the recipient of this letter, will you take
19 that to mean that her REF would be at least 50 percent?

20 MR. CERASIA: Objection.

21 THE COURT: Yes, sustained.

22 MS. TSE: Can I rephrase?

23 THE COURT: You can try.

24 Q. Did this letter indicate to the addressee that each
25 full-time faculty member in the clinical departments, of which

G6D3TSE4

Sanchez - direct

1 department of medicine is such, is expected to have achieved
2 extramural funding support for at least 50 percent of the
3 portion of his or her salary allocated to conduct research?

4 MR. CERASIA: Objection.

5 THE COURT: Well, the letter speaks for itself. Are
6 you asking the witness to interpret the letter?

7 MS. TSE: I'm asking her as any rational and
8 reasonable individual whether she would take that to mean that
9 she is required to come up with 50 percent of her salary
10 support from extramural funding.

11 THE COURT: Well, I sustained the objection. This
12 witness has minimal, if any, information about this particular
13 letter. So, I don't think it is appropriate to ask her to
14 opine or speculate about how someone else seeing it would
15 perceive it.

16 MS. TSE: All right. I understand. May I move on
17 with Exhibit 6?

18 THE COURT: You may.

19 Q. Exhibit 6 is a letter that Dr. Tse sent to Dr. Blaser, her
20 department chair, on May 13, 2010, which was copied to
21 Mr. Odom.

22 Was Mr. Odom the vice president for employee and labor
23 relations at the time?

24 A. Yes.

25 Q. Please describe Mr. Odom's responsibilities to the Court.

G6D3TSE4

Sanchez - direct

1 A. He's the executive responsible for policy interpretation,
2 is responsible for grievances, arbitrations, union contracts,
3 things of that nature.

4 Q. Please read the box section in Exhibit 6.

5 A. "I am hereby requesting long-term disability leave
6 pertaining to 65 percent of my time and effort at NYU School of
7 Medicine starting June 1st of 2010. Performing laboratory
8 experiments on biohazardous specimens (human fluids and tissue
9 isolettes) requires a level of manual dexterity and fine
10 control I no longer have, which precludes increasing my time
11 and effort on collaborative projects with Drs. W. Rom, J.
12 Reibman, and B. Young, or generating preliminary data that is
13 needed to apply for independent funding from extramural
14 sources."

15 Q. Did Dr. Tse identify to Dr. Blaser that she is an employee
16 with disabilities?

17 MR. CERASIA: Objection.

18 THE COURT: I'll sustain to form. The document speaks
19 for itself. Again, I don't believe that Ms. Sanchez should be
20 asked to interpret this letter.

21 Q. Maybe the next exhibit is something that Ms. Sanchez can
22 help us with. Exhibit 16 is the employee statement from a
23 disability claim form from Unum.

24 MS. TSE: May I approach, your Honor?

25 THE COURT: You may.

G6D3TSE4

Sanchez - direct

1 MR. CERASIA: I have no objection to the document.

2 THE COURT: Plaintiff's Exhibit 16 received in
3 evidence.

4 (Plaintiff's Exhibit 16 received in evidence)

5 Q. Does this look familiar to you?

6 A. No.

7 Q. Is benefits under the purview of human resources?

8 A. Yes.

9 Q. But you have never come across anything that looks like
10 this?

11 A. I have staff who are responsible for this that manage it.

12 Q. Who would that be?

13 A. I don't know who processed this particular claim.

14 Q. This is the employee statement, so --

15 A. Yes. It could be any one of 20 staff members who process
16 it.

17 Q. All right. Please read the box on page two, that's Bate
18 stamped NYU third party 000392.

19 THE COURT: Would you say that again, please?

20 MS. TSE: The second page of the claim form.

21 THE COURT: You gave the Bate stamp number?

22 MS. TSE: Yes. Which is 0000392.

23 Q. And that would be section four. For all medical conditions
24 answer the following questions. Can you please read.

25 A. Sure. "What specific duties of your occupation are you

G6D3TSE4

Sanchez - direct

1 unable to perform due to your medical condition?" Answer:

2 "Performing laboratory work as a research scientist."

3 Q. Thank you. The form was signed by Dr. Tse and dated

4 May 18, 2010.

5 MS. TSE: May I approach with Exhibit 17, your Honor?

6 THE COURT: You may. Now, let me ask you, so far this
7 witness has not been able to help us on any of the documents
8 that you have showed to her. Is there some document where she
9 can give some helpful and knowledgeable testimony that would
10 move this along?

11 MS. TSE: She may be able to direct us to who can help
12 us with this because, apparently, the plaintiff's disability
13 claim is a major issue for dispute.

14 MR. CERASIA: Your Honor, may I be heard a minute?

15 THE COURT: Certainly.

16 MR. CERASIA: Back at the May 12 final pretrial
17 conference, we lodged an objection to Ms. Sanchez as a witness.
18 She has no personal knowledge of Dr. Tse's employment
19 situation. In fact, I think she will testify today this is the
20 first time she's ever met Dr. Tse. She just has no connection
21 to this. I think she's just being called because of her
22 capacity as someone who is the senior VP and vice chair of
23 human resources organizational behavior. But, she doesn't have
24 the kind of personal knowledge of foundation needed to get
25 through documents like this, and I just respectfully submit

G6D3TSE4

Sanchez - direct

1 that I think we're going to waste the Court's time.

2 THE COURT: I'm not concerned about wasting my time as
3 much as I am concerned about wasting Ms. Sanchez's time.

4 MR. CERASIA: Me too.

5 THE COURT: So the question, Dr. Tse, is there a
6 particular document or some other evidence that Ms. Sanchez can
7 testify about based on personal knowledge?

8 MS. TSE: My goal is to pretty much get some sense of
9 what Dr. Tse's employer's approach is in handling with
10 employees with disabilities. And also how they handle their
11 disability insurance claims. At the pretrial conference, we,
12 when Mr. Cerasia brought that up, I basically said that we need
13 some sense as to how the employer deals with these issues,
14 because so far, the department chair said he was not aware that
15 he needed to deal with it.

16 THE COURT: I don't think that's what he said,
17 Dr. Tse. You have to be very careful about mischaracterizing
18 what witnesses have said.

19 But my question to you is do you have any good-faith
20 basis for assuming that Ms. Sanchez will be able to explain or
21 add anything to your case?

22 MS. TSE: She will most likely, and correct me if I'm
23 wrong, provide some sense, like she did earlier in her
24 testimony, as to how NYU handles such situations with their
25 employees in general.

G6D3TSE4

Sanchez - direct

1 THE COURT: Which situations? You mean employees with
2 disabilities or your situation?

3 MS. TSE: Employees with disabilities in particular.

4 THE COURT: What was the last part?

5 MS. TSE: In particular. Employees with disabilities.

6 THE COURT: Ms. Sanchez, in your capacity at NYU, do
7 you specifically deal with employees with disabilities?

8 THE WITNESS: I have staff that deal directly with the
9 employees who have disabilities.

10 THE COURT: All right. Do they report directly back
11 to you?

12 THE WITNESS: Sometimes, sometimes not.

13 THE COURT: Did you have any knowledge or involvement
14 with Dr. Tse's claim?

15 THE WITNESS: I was just aware of the fact that there
16 was a situation with Dr. Tse and insufficient funding to source
17 her salary. But it was Reg Odom who handled the case itself in
18 terms of representing HR.

19 THE COURT: Dr. Tse, under the circumstances, it is
20 not clear to me that Ms. Sanchez can provide any helpful
21 information to the Court. Is there any particular question you
22 wish to ask of her that might indicate that she has some
23 knowledge of your issues?

24 MS. TSE: Yes.

25 Q. Was Margaret Meagher the benefits director during 2010 to

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Sanchez - direct

1 2011?

2 A. Yes.

3 MS. TSE: With the Court's permission, perhaps we
4 would be better situated if we call Ms. Meagher to testify,
5 rather than -- Ms. Meagher was on NYU's witness list.

6 THE COURT: Right. But, this is your case right now.

7 MS. TSE: I understand. But, it appears that I may
8 have called a witness who is trying her best to help, but
9 because the jobs within HR were delegated to different staff
10 members, she could not really, you know, provide any more
11 information than what's on the piece of paper which we can all
12 read.

13 THE COURT: Yes. I hear that. Mr. Cerasia, do you
14 wish to be heard?

15 MR. CERASIA: No, your Honor. I just repeat that she
16 is a witness who doesn't have personal knowledge of this
17 situation.

18 THE COURT: Ms. Sanchez, so we don't take up any more
19 of your time, thank you for showing up. You are dismissed as a
20 witness.

21 THE WITNESS: Thank you, your Honor.

22 MS. TSE: Your Honor, can I ask two more questions?
23 I'm sorry. I should -- I didn't expect you to dismiss her.

24 THE COURT: What else would I do when the last five
25 minutes we've been talking about she is not really able to help

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1 move this case forward? Two more questions. And that's it.

2 BY MS. TSE:

3 Q. Was human resources or the employees department responsible
4 for compliance of employment laws?

5 A. The institution is responsible for ensuring that laws are
6 complied with, and human resources is the department that is
7 most knowledgeable.

8 Q. One more question is so human resources would not be
9 responsible for notifying individual faculty members of their
10 required extramural funding?

11 A. Extramural funding is a separate responsibility, and that
12 falls under Steve Abramson.

13 MS. TSE: All right. That's the two questions.

14 THE COURT: Thank you, Ms. Sanchez.

15 THE WITNESS: Thank you.

16 (Witness excused)

17 THE COURT: I'm looking at the trial schedule and I'm
18 looking forward tomorrow, we have two witnesses coming in. By
19 the way, if you can take advantage of it, my matter which was
20 on for tomorrow morning has been resolved, so I am also
21 available tomorrow morning if that helps accommodate anybody
22 else's schedule on the witness list, so we can sit a full day
23 tomorrow.

24 Now, as I understand it, we're having tomorrow
25 Mr. Odom and Ms. Cribben.

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1 MS. TSE: Yes.

2 THE COURT: Based on information I've seen, I assume
3 that they will be able to give some information that's helpful
4 here.

5 MS. TSE: Yes.

6 THE COURT: Now, based on what Ms. Sanchez said, I
7 also believe that Mr. Abramson can be helpful.

8 MS. TSE: Yes.

9 THE COURT: You can be helpful. And Ms. Meagher, she
10 will also perhaps be able to be of help.

11 What about Elsa Nuñez, who is she?

12 MS. TSE: She was and still is the manager for the
13 department of medicine.

14 THE COURT: Manager in what sense?

15 MS. TSE: Pretty much with space assignment.

16 THE COURT: What is the relevance to what's before me
17 now?

18 MS. TSE: She was responsible for where my office and
19 my laboratories were placed.

20 THE COURT: In what period of time?

21 MS. TSE: The time in question.

22 THE COURT: 2010/2011?

23 MS. TSE: Yes. And I had requested her to be on the
24 witness list mainly because NYU considered the provision of
25 laboratory and space as reasonable accommodations.

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1 THE COURT: I don't quite understand that.

2 MS. TSE: In their JPTS statement, they said that we
3 provided Dr. Tse with a lab and an office after she was removed
4 as the director of the core cytometry core, and they considered
5 that to be reasonable accommodations.

6 THE COURT: Is that an accurate statement?

7 MR. CERASIA: I don't believe it is an accurate
8 statement. I think it is in the context of after she was
9 removed as the core director, no one kicked her out. She still
10 had an office and laboratory space, and they supported her to
11 try to find extramural funding. I think it is as simple as
12 that. It is not like she telecommuted, is my point. I don't
13 know what relevance it would have because I don't know that --

14 THE COURT: I'm not sure it has relevance either.
15 Dr. Tse, the question about lab and office space isn't the
16 issue here, is it?

17 MS. TSE: If the space was not provided in
18 consideration of my limitations and needs that I had previously
19 made known to the department.

20 THE COURT: Well, I don't understand. I think that
21 what you were seeking as an accommodation had nothing to do
22 with the type of lab you got. It was whether or not you could
23 get a lab assistant. Right?

24 MS. TSE: Yes. But --

25 THE COURT: What difference does it make which lab you

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1 were given?

2 MS. TSE: Mr. Cerasia just pointed out that after I
3 was removed as the CFAR flow cytometry core director, the
4 school did not kick me out right there and then, but provided
5 me with space so I can go and apply for extramural funding.
6 But the space has to be suitable. And it's not.

7 THE COURT: Well, that's not an issue before me. The
8 suitability of the space in terms of the accommodation which
9 you were seeking is not really relevant. Are you saying it was
10 too small or it was too big or it didn't have the equipment you
11 needed? Did you specifically ask for certain things that you
12 needed in order to try and get preliminary data?

13 MS. TSE: But, well, what I was driving at is that the
14 space is such that it makes it extremely difficult for someone
15 with my medical issues to work.

16 THE COURT: Why?

17 MS. TSE: The laboratory was too far away from the
18 office, even after I had articulated to Dr. Blaser years ago
19 that proximity is very important, because of my condition. And
20 an office for the better part of the summer had no air
21 conditioning. And it would not have mattered except for
22 the fact that NYU expected me to perform.

23 THE COURT: I think we're getting too far afield here,
24 Dr. Tse. As I understand your case, you were saying they did
25 not provide you with reasonable accommodation which you told

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1 them was a lab assistant. So, branching out into un-air
2 conditioned offices, I don't think is really relevant unless
3 you're making some claim of putative assignments or something.

4 MS. TSE: No, I understand, your Honor. That's why
5 she is not on my list anymore.

6 THE COURT: Okay.

7 MS. TSE: That's why after the pretrial conference I
8 took her off my list, along with a whole bunch of other
9 witnesses that I was going to call.

10 THE COURT: All right.

11 MS. TSE: And besides that, Elsa Nuñez will not be
12 able to help with the disability benefit applications.

13 THE COURT: All right. So, why is she on this list
14 then? You took her off of yours. Mr. Cerasia?

15 MS. TSE: She was also on NYU's list.

16 THE COURT: Yes. Do you need her?

17 MR. CERASIA: No.

18 THE COURT: All right. Then I'm sure she will be very
19 happy to hear that. So who do we have for tomorrow?

20 MR. CERASIA: Your Honor, may I be heard first on
21 Ms. Meagher? I'm not so certain I understand why she would
22 need to come in. The issue is not what Unum did with the
23 disability application. The real issue is the fact that
24 Dr. Tse applied in May of 2010, and then there was an issue
25 about a discussion, you heard Dr. Blaser testify today, about

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1 August of 2010. It is really the forms. The process by
2 which --

3 THE COURT: Well, Dr. Tse, did you have any
4 conversations with Ms. Meagher?

5 MS. TSE: Yes, I did.

6 THE COURT: She's relevant.

7 MR. CERASIA: I only ask, Judge, because she's in and
8 out of the office. She has pretty debilitating medical issues
9 that makes mobility an extremely difficult for her. I don't
10 know that we're going to call her here because of those
11 limitations. So I want to understand if Dr. Tse's going to
12 call her as a witness, because frankly I don't think NYU will.
13 At this point we won't.

14 MS. TSE: Depending on whether Mr. Odom can help us
15 with the information that we would or that I would like to get.
16 Ms. Meagher basically handled the applications, but we may be
17 able to get the information that we need just from the
18 exhibits.

19 THE COURT: Did you have a conversation with
20 Ms. Meagher as you filled these out?

21 MS. TSE: I met with her. I got instructions from her
22 as to what to do. She also told me what they would need as
23 supporting medical records, that I will need to meet with
24 Alison Graham who is a nurse, basically, examines employees
25 claiming disabilities. And so, she was very involved in the

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1 entire process of applying for disability benefits.

2 But, as I said, if we can get all the information and
3 all the clarification that we need from the exhibits, from
4 Mr. Odom, then we would not need to bring her in.

5 THE COURT: All right, then. It seems to me that if
6 we can avoid bringing her in, if she only had dealings with you
7 in terms of the formality and the mechanics of filling out the
8 disability form, and did not have any discussions with you
9 about accommodation, then it is not clear to me that she can
10 add anything.

11 MS. TSE: She was aware that the reason why I had to
12 apply for long-term disability benefits was because I needed
13 laboratory assistants to do the work that I cannot do because
14 of my disability. Mr. Odom was just as aware of that so.

15 THE COURT: But I'm still not sure, just because she
16 was aware that you were applying for disability, are you saying
17 that the only reason you applied for disability is that NYU
18 would not provide you with the needed assistants?

19 MS. TSE: Yes. Because basically, by the end of May,
20 I would lose 65 percent of my salary, unless I can replace it
21 with extramural funding. And without laboratory assistants, I
22 have no confidence whatsoever that I can accomplish that.

23 THE COURT: I think we keep going around and around in
24 circles on this, but it's not clear to me that Ms. Meagher will
25 be able to add anything. And if it is an extreme inconvenience

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1 for her physically to come in here, I would need a very
2 detailed offer of proof from you, Dr. Tse, as to why we should
3 bring her in here.

4 MS. TSE: I understand. I'm hoping Mr. Odom will be
5 able to answer all the questions that we have for him.

6 THE COURT: All right. If you wish, see if you can
7 call any of the remaining witnesses to see if they can come in
8 and testify tomorrow morning. Otherwise we will keep with the
9 schedule of Mr. Odom and Ms. Cribben tomorrow afternoon.

10 MS. TSE: Given that Dr. Abramson is very likely a
11 very busy man, since he is the vice dean of faculty, we may be
12 better off to stick to the schedule that we already have,
13 unless your Honor thinks that it would help for --

14 THE COURT: No, the only thing that I was suggesting,
15 initially I told you I was not available tomorrow morning. It
16 turns out that I am. I understand that you set your schedule
17 accordingly. All I am saying is that if it would accommodate
18 any of the witnesses who are scheduled to appear at other times
19 to appear tomorrow morning, then I am available. Otherwise,
20 we'll just keep with the schedule that we have.

21 MS. TSE: What do you think, Mr. Cerasia?

22 MR. CERASIA: I don't know about Mr. Odom or
23 Ms. Cribben. As soon as we leave here we'll call them, and
24 we'll let Dr. Tse know. Because to be honest, I am very
25 concerned about finishing two witnesses in a three-hour block.

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1 And I know Ms. Cribben has an important doctors meeting on
2 Wednesday at 1 p.m. so she wouldn't be available to testify,
3 and Dr. Abramson's scheduled in the morning, and he has a
4 lecture to give at 12 or 1 o'clock. So we've got --

5 THE COURT: As I say, I'm giving you the opportunity
6 to see if we can move this along a little bit more. If it
7 works out, fine. If it doesn't, then it doesn't. All right.
8 Anything else we can do today? Dr. Tse?

9 MS. TSE: No, I'm good for the day.

10 THE COURT: Okay. Mr. Cerasia?

11 MR. CERASIA: Well, I have no witnesses, Judge, I
12 mean, if Dr. Tse can't start testifying.

13 THE COURT: Anything else you need to raise with me?

14 MR. CERASIA: No. I'm sorry, your Honor. No.

15 THE COURT: That's fine. We are adjourned. I would
16 like you to contact by e-mail Ms. Ackerman-Brimberg and let her
17 know whether or not you can take advantage of my newfound
18 availability tomorrow morning. If not, I will see you tomorrow
19 afternoon.

20 MR. CERASIA: Thank you, Judge. Are we allowed to
21 leave anything in the courtroom like the binders somewhere so I
22 don't have to bring them back?

23 THE COURT: Yes, you can. We lock the courtroom in
24 the evening and it is opened in the morning. And I don't have
25 any other matters scheduled here today or, other than you,

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1 tomorrow. So I think that you can leave them if you don't need
2 them.

3 MR. CERASIA: I'm going to put them in the corner.

4 THE COURT: You can put them wherever you want.

5 MR. CERASIA: Thanks.

6 (Adjourned until June 14, 2016, at 2 p.m.)
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